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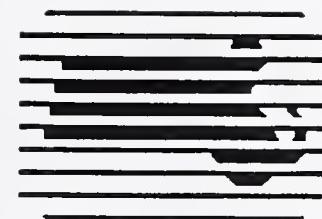


Commonwealth of Massachusetts  
Department of Consumer Affairs & Business Regulation



## Cable Television Commission

133 Portland Street, Suite 300  
Boston, Massachusetts 02114-1707



William F. Weld  
*Governor*

**(617) 727-6925**

John D. Patrone  
*Commissioner*

December 27, 1996

RE: Docket No. R-25

To All Interested Parties:

Enclosed please find the Commission's Report and Order in Amendment of 207 CMR 2.00 - 10.00.

If you have any questions regarding the Order, please call Helen Koroniades, Assistant General Counsel.

Sincerely,

A handwritten signature in black ink that reads "John D. Patrone".

John D. Patrone  
*Commissioner*



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**Commonwealth of Massachusetts  
CABLE TELEVISION COMMISSION\***

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In Re ) Docket No.: R-25  
Amendment of )  
207 CMR 2.00 -10.00 ) Released: December 27, 1996  
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**REPORT AND ORDER**

**I. BACKGROUND**

1. On October 16, 1996, the Commission issued a Notice of Proposed Rulemaking ("Notice") which sought comments from interested parties on proposed amendments to its regulations, 207 CMR 2.00 - 10.00. The Commission issued its Notice in response to Executive Order No. 384, which Governor Weld issued on February 9, 1996. This Order directs all state agencies to rescind, revise or simplify their regulations by the end of 1996. Consequently, the Commission's new regulations are effective on **December 27, 1996**. Under our enabling legislation, M.G.L. c. 166A, the Commission has the authority to "issue such standards and regulations as it deems appropriate to carry out the purpose of this chapter." We are further authorized to amend our regulations in accordance with the state Administrative Procedure Act, M.G.L. c. 30A, §§ 2 and 3.

2. As part of our regulatory review, we have found that some of our current rules are out of step with a host of legal, technological and market developments which have taken place since most of our regulations were promulgated or substantially revised. We have concluded that our current regulations are in need of updating to better reflect the needs and opportunities available to consumers in an increasingly competitive video services market. We also believe the changes will create a shorter, clearer and more user-friendly set of regulations responsive to the needs of consumers and providers in the 1990's and beyond.

3. Following the release of our Notice, we held a public hearing at the Commission's office in Boston on November 6, 1996. The following individuals testified at the hearing: Kenneth Ira Spigle, Esq., of Rosenberg, Freedman & Goldstein for New England Cable Television Association, Inc. ("NECTA"); Paul R. Cianelli, Esq., President and Chief Executive Officer, NECTA; John M. Urban, Vice President, Government Relations, Cablevision Systems Corporation ("Cablevision"); Nick Leuci, Vice President for Government and Community Affairs, Time Warner Cable ("Time Warner"); Peter J. Epstein, Esq. for Massachusetts Chapter of the National Association of Telecommunications Officers and Advisors ("MassNATOA"); David G. Kanter, Member and Representative for the Town of Lexington, Town of Lexington Cable TV &

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\* Formally, the "Massachusetts Community Antenna Television Commission" under M.G.L. c. 166A, § 2.

Communications Advisory Committee (“Town of Lexington”); William August, Esq., Horton & August, P.C.; and Mark E. Reilly, Counsel and Director of Government & Public Affairs, Continental Cablevision, Inc. (“Continental”).

4. In addition to the public hearing comments, the Commission received written comments from: Cameron F. Kerry, Esq., of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. for Time Warner Entertainment Company, L.P.; John M. Urban, Vice President for Government Relations, Cablevision; Kenneth Ira Spigle, Esq., of Rosenberg, Freedman & Goldberg for NECTA; David G. Kanter, Member and Representative for the Town of Lexington, the Town of Lexington; William August, Esq., Horton & August, P.C.; Mark E. Reilly, Counsel and Director of Government & Public Affairs, Continental; Peter J. Epstein, Esq. for MassNATOA; and Nancy Tavernier, Chair, Board of Selectmen and John Covert, Chair, Cable Advisory Committee, the Town of Acton.

5. We have reviewed all of the oral and written comments. Cable industry commenters generally expressed the view that our overall approach to the regulations as expressed in our Notice would result in streamlined regulations benefiting cable operators, consumers and issuing authorities.<sup>1</sup> Municipal representatives, however, expressed concern regarding a number of our substantive proposals, including the removal of the public hearing requirement for an initial license and our proposal to repeal the provisional licensing requirement.<sup>2</sup>

6. We have concluded that many of our current rules are unnecessary, for a number of reasons. First, as stated in our Notice, many provisions repeat, many times word-for-word, pre-existing language in other state or federal regulations. We determined that it is both practical and fully consistent with our statutory authority to incorporate by reference legal provisions already located elsewhere in our rules. Second, some of our current rules repeat provisions existing elsewhere in our *own* regulations. We have consolidated this repetitive language by establishing general provisions applicable to all, or major portions of, our regulations. For example, amended section 207 CMR 2.00 now contains a number of provisions that were previously located elsewhere in the regulations. This allows us to set up uniform rules in one chapter of our rules which can generally be applied to all of them. We believe this change will not only eliminate the need to repeat similar provisions in a number of different parts of our rules, but will also make it easier for readers to follow those rules as well.

7. Additionally, we have revamped what are currently three separate licensing chapters into a general licensing section which addresses procedural and substantive requirements for both initial and renewal licenses and the process for amending them. In this effort, we have sought to retain, and in some cases to bolster, rules designed to insure that the licensing process is conducted fairly and judiciously. Whenever possible, we have also removed procedural licensing rules which

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<sup>1</sup> Continental Comments, p. 1; Cablevision Comments, p. 1; Time Warner Comments, p. 1; NECTA Comments, pp. 1, 2.

<sup>2</sup> MassNATOA Comments, p. 1; Attorney August Comments, pp. 1, 2.

we could no longer defend as being both relevant and sensible as we move into a new telecommunications era we believe will be marked by competition.

8. We have also removed the Commission's forms from the regulations. From an administrative law perspective, these forms never belonged in our rules. Removing the forms will allow us to update them as necessary to keep pace with the changing information needs of consumers, issuing authorities, operators and the Commission. We have largely left intact our transfer regulations, which we revised in November 1995. We will also retain all of our essential billing and service regulations. We believe they continue to provide important consumer protections in this area. Conversely, we have chosen to repeal most of our security deposit rules because we find that this issue is no longer of primary concern to consumers. Indeed, most operators no longer even *collect* such deposits. We have, however, retained rules to protect subscribers against unfair charges or withholdings in connection with these deposits. Finally, we have significantly streamlined our rate rules by providing one general reference to, rather than repeating, a host of FCC regulations, and by adopting procedural rules from the well-established State Administrative Procedure Act, M.G.L. c. 30A, and corresponding procedural regulations.

9. This Report and Order addresses issues raised by the comments we received following the issuance of our Notice. We have summarized comments offered by all parties in response to each of our substantive proposals, followed by our specific analysis of each of these recommendations. This Report and Order also includes an appendix with our new regulations as they will appear in published form.

## **II. 207 CMR 2.00 - RULES FOR THE ADOPTION OF ADMINISTRATIVE REGULATIONS**

### **A. Title of Chapter**

10. The Commission is changing the title of this chapter to "General Rules," to reflect the character of the new chapter. Our proposals, the resulting comments and our decisions on our final provisions are described below.

## B. 2.02: Petition for Adoption of Regulations

### Proposal

11. We proposed to rename this section, addressing petitions to change our regulations, as “Petition for Adoption, Amendment or Repeal of Regulations,” and to move it to proposed section 2.01. We sought to repeal provisions in subsection (1), such as those specifically referring regulatory petitions to the Executive Director. We also proposed to streamline and merge regulatory petition procedures from current section 2.03 into a new subsection (2).

### Comments

12. NECTA advocated that the Commission include in this section a time frame of 45 days for the Commission to respond to regulatory petitions.<sup>3</sup> The Town of Acton supported a response time of no more than 60 days.<sup>4</sup> The Town of Lexington advocated that the regulations provide petitioners an opportunity for a hearing, and that if the Commission declined to act on a petition, it be required to forward the petitioner a written explanation for the Commission’s decision.<sup>5</sup> The Town of Lexington advocated that a mandatory public hearing be held if a petition is countersigned by one or more municipalities.

### Discussion

13. While the Commission is committed to issuing prompt responses to regulatory petitions, we have decided not to impose a deadline for such responses. The comments on this issue raise several important questions. First, a petition may be filed which is the subject of a Commission proceeding, making it inappropriate for the Commission to act on it while the proceeding is pending. Also, the subject matter or range of issues addressed by such a petition is potentially very broad. It may raise complex or thorny issues requiring extensive research, internal deliberation, or even additional public input. In addition, the Commission is concerned about the legal consequences of its failure to act before the deadline, and whether such a failure would void the petition. The Commission has therefore decided not to impose an arbitrary, one-size-fits-all deadline at this juncture.

14. The Commission also declines to add language requiring us to hold a hearing on the petition. The Commission notes that M.G.L. c. 30A, § 4, which codifies the petition process for the adoption of regulations by all state agencies, contains no such requirement. Moreover, a public hearing continues to be required in most cases in which the Commission seeks to amend, repeal or add regulations. The Commission will, however, retain language requiring it to notify the petitioner about its decision whether to take action on the petition.

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<sup>3</sup> Hearing Transcript, pp. 31-32; NECTA Comments, pp. 3-4.

<sup>4</sup> Town of Acton Comments, p. 2.

<sup>5</sup> Town of Lexington Comments, p. 2.

## **C. Current 207 CMR 2.03: Initial Procedure to Handle Recommended Regulations**

### **Proposal**

15. As noted in Section B above, the Commission sought to amend and replace this section with new provisions in subsection 2.01(2).

### **Comments**

16. See the Comments to Section B above. Additionally, NECTA noted that the Commission no longer has part-time Commissioners who hold regularly scheduled meetings.<sup>6</sup>

### **Discussion**

17. After due consideration, the Commission finds that this section is no longer relevant or necessary to carry out our regulatory review process and we therefore repeal section 2.03.

## **D. Current 207 CMR 2.07: Availability of Regulations**

### **Proposal**

18. The Commission proposed to repeal this section, which requires the Commission to keep a book of our regulations and make them available to the public.

### **Comments**

19. The Town of Lexington objected to the repeal of section 2.07 in the absence of other state law requiring distribution of the regulations upon request.<sup>7</sup>

### **Discussion**

20. Massachusetts General Laws, c. 30A, § 6B currently requires the Commission to make a copy of our regulations “readily available in a prominent place...for the purpose of public inspection and copying.” The Commission, therefore, finds it unnecessary to retain the current provision since we are already required to supply copies of our regulations, as well as our forms, to all persons who request them. After due consideration, the Commission therefore repeals section 2.07.

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<sup>6</sup> Hearing Transcript, pp. 31, 32; NECTA Comments, p. 3, n. 3.

<sup>7</sup> Town of Lexington Comments, p. 2.

## **E. Current 207 CMR 2.09: Advisory Rulings**

### **Proposal**

21. This section provides for requests from interested parties for the issuance of advisory rulings by the Commission. We proposed to repeal it.

### **Comments**

22. NECTA observed that M.G.L. c. 30A, § 8 does not establish a time frame during which the Commission must act on a request for an advisory opinion, unlike current section 2.09, which requires the Commission to act upon such a request within 30 days of its receipt.<sup>8</sup> NECTA recommended that the Commission establish a reasonable time period, perhaps 45 days, for the consideration of such requests.

### **Discussion**

23. Massachusetts law already authorizes requests for advisory opinions under M.G.L. c. 30A, § 8, rendering our current regulatory provisions unnecessary. The Commission also declines to retain a deadline to act upon advisory ruling requests. We find that the explanation provided in the Discussion section under section 2.03, above -- applicable to our repeal of the regulatory petition response deadline -- also applies here. After due consideration, the Commission repeals section 2.09.

## **F. Proposed 207 CMR 2.02: Notice of Public Hearings**

### **Proposal**

24. A number of provisions in the current regulations provide separate but comparable public hearing notice procedures. Notice provisions are currently found in 207 CMR 3.01 (licensing); 207 CMR 4.03 (transfers); 207 CMR 5.04 (amendments); 207 CMR 6.37(3) (rate hearings); and 207 CMR 8.01 (renewals). The Commission therefore proposed to consolidate these provisions into one general section in proposed section 2.02.

### **Comments**

25. The Commission received a number of comments on this proposed section. These comments address a number of distinct subjects, which are discussed separately below.

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<sup>8</sup>

Hearing Transcript, pp. 31-32; NECTA Comments, pp. 3-4.

### **i. Responsibility for Public Notice**

26. Both NECTA and Time Warner suggested adding to proposed subsection (1), after the phrase “prior public notice,” the phrase “by the issuing authority.”<sup>9</sup> This would clarify that the issuing authority would be responsible for public notice pursuant to subsection (1).

### **ii. “Non-privileged” Materials**

27. Both NECTA and Time Warner expressed concerns about the provisions providing that only “non-privileged” materials be made available for public inspection.<sup>10</sup> NECTA observed that the proposed term “non-privileged” had not been defined. NECTA proposed replacing this phrase with a reference in proposed subsection (1) to the Massachusetts statutes on public records, M.G.L. c. 66, and M.G.L. c. 4, § 7, clause 26. Time Warner suggested that the Commission either reference the state’s public record statute, or the Commission’s proprietary information test in current 207 CMR 6.00.

### **iii. Cablecasting**

28. Both NECTA and Time Warner observed that cable operators do not have local origination capability in all of their franchises.<sup>11</sup> Time Warner proposed adding language to subsection (2), allowing cable operators to use “best efforts” to cablecast. It described the problem as follows: “The reason for this recommended change is that many of our franchise areas operate public access studios, and we do not have local origination capability on these systems. Because we have no editorial control over the public access channels, we cannot guarantee a notice would be broadcast.”<sup>12</sup> In response to this concern, NECTA advocated inserting the phrase “in the control of the cable operator” after the words “cablecasting facilities” in subsection (2).

### **iv. Notice of Hearing on an Additional Cable Franchise**

29. NECTA raised two problems concerning the notice of public hearing provisions.<sup>13</sup> The first related to the final sentence of subsection (2), which excludes from the cablecasting requirement a “public hearing on the grant of an initial license....” NECTA observed: “Such hearings, if held in a community with an existing cable system, are likely to be of interest to the residents of the municipality as well as the current cable operator.”<sup>14</sup> Accordingly, NECTA recommended that the Commission not exclude the cablecasting requirement for hearings on the

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<sup>9</sup> NECTA Comments, p. 5; Time Warner Comments, pp. 1-2.

<sup>10</sup> Hearing Transcript, p. 32 (NECTA), pp. 46-47 (Time Warner); NECTA Comments, pp. 4-5; Time Warner Comments, pp. 2-3.

<sup>11</sup> Hearing Transcript, p. 46 (Time Warner); NECTA Comments, p. 5; Time Warner Comments, p. 2.

<sup>12</sup> Hearing Transcript, p. 46.

<sup>13</sup> NECTA Comments, p. 6.

<sup>14</sup> *Id.*

applications from *additional* cable operators seeking to offer service in a community which already has a cable franchise.

30. NECTA also proposed adding a new subsection (3), which would read: “The Issuing Authority shall serve, upon any cable operator licensed to operate in the municipality advance written notice of any public hearing to be held pursuant to 207 CMR 3.00, 4.00 or 6.00.”<sup>15</sup> NECTA proposed this new subsection because “[t]here are some types of public hearings for which existing cable operators should have notice, but might not receive it under the Commission’s proposed regulations.”<sup>16</sup>

#### **v. Notice to Issuing Authorities of Public Hearings and Filings**

31. The Town of Lexington raised two issues concerning issuing authorities’ receipt of notices and filings. The Town suggested that section 2.02 include a provision that issuing authorities receive notice of all the Commission’s public hearings,<sup>17</sup> and that a new section be added to chapter 2.00, which would mandate that the “affected Issuing Authorities are concurrently to receive from Operators copies of all their filings with the Commission and likewise are concurrently to receive copies from the Commission of all its correspondence to the Operators, unless, in each instance, explicitly waived by the Issuing Authority.”<sup>18</sup> (Emphasis in original.)

### **Discussion**

#### **I. Responsibility for Public Notice**

32. The Commission observes that under current practice, public notice for hearings on initial licenses, transfers and renewals are arranged and paid for by the issuing authority, and that public notices for hearings on rate filings are arranged and paid for by the cable operator after the hearing time and location have been established by the Commission. The Commission finds that issuing authorities should continue to be responsible for satisfying public notice requirements with respect to licensing matters, and that operators should continue to notify the public of upcoming rate hearings. Accordingly, the Commission will add a new second sentence to subsection (1): “Prior public notice pursuant to 207 CMR 3.00 and 207 CMR 4.00 shall be provided by the issuing authority, and prior public notice pursuant to 207 CMR 6.00 shall be provided by the cable operator.”

#### **ii. Non-privileged Materials**

33. The Commission has concluded that the term “non-privileged” should not be used here for the reasons discussed in the Comments section, above. Instead, the Commission finds that

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<sup>15</sup>

*Id.*

<sup>16</sup>

*Id.*

<sup>17</sup>

Town of Lexington Comments, p. 2.

<sup>18</sup>

*Id.* p. 3.

the context of this regulation properly calls for a general reference to the Massachusetts public records laws, M.G.L. c. 66, and M.G.L. c. 4, § 7, clause 26. Accordingly, the Commission has deleted the phrase “non-privileged” from the next-to-last sentence of proposed subsection (1). In its place, after the word “hearing,” we have added the phrase “that constitute public records under state law.”

### **iii. Cablecasting**

34. The Commission agrees that it would be appropriate to provide a regulatory exemption for cable operators who lack the legal authority to cablecast notices under all circumstances. We have accepted NECTA’s suggestion, and added the phrase “within the control of the cable operator” to the first sentence of proposed subsection (2). Adopting Time Warner’s suggestion, the Commission has also added the following sentence to subsection (2): “If the cablecasting facilities are not within the control of the cable operator, the operator shall use its best efforts to cablecast the subscribed notice.” We find that even in instances where an operator does not have direct control over the content of programming aired on cablecasting facilities, the operator may be able to arrange for others to cablecast the notice under this subsection.

### **iv. Notice of Hearing on an Additional Cable Franchise**

35. The Commission supports NECTA’s proposal to require the existing franchisee to cablecast a public hearing notice on an overbuilding cable operator’s license application. We find this notice requirement is both reasonable and in the public interest. The Commission has, therefore, deleted the last sentence of proposed subsection (2). Because subsection (2) only applies to an area served by a operating cable system, the deletion of this last sentence will have no effect on any community not currently served by a cable operator.

36. The Commission has concluded that NECTA’s second proposal, requiring issuing authorities to serve notice of any public hearing on cable operators, is rendered largely unnecessary by other changes made by this Report and Order. Specifically, our new provisions requiring incumbent operators to cablecast the public hearing notice mean that an existing cable operator will necessarily receive prior notice of an overbuild license application when the issuing authority provides that operator the public hearing notice to be cablecast. In light of the FCC’s effective competition regulations, the Commission would expect only limited rate proceedings, if any, to occur under 207 CMR 6.00 in overbuild situations, obviating the need for prior notice in this context. Finally, the Commission finds that it is not necessary to provide separate prior notice of transfer hearings to other cable licensees serving the franchise area.

### **v. Notice to Issuing Authorities of Public Hearings and Filings**

37. The Town of Lexington’s concern about receiving notice of all the Commission’s public hearings only applies to rate hearings under 207 CMR 6.00 and other Commission proceedings not specifically referenced in our rules, because the issuing authority itself conducts public hearings under 207 CMR 3.00 and 207 CMR 4.00. The Commission has and will continue

to notify issuing authorities of all Commission hearings which may have a direct impact on them, regardless of whether such proceedings are specifically referred to in our rules.

38. The Town of Lexington's request concerning filings and correspondence is very broad, encompassing materials on a host of topics pertinent to the Commission. Most of these documents are public records and are therefore available to all interested parties, including issuing authorities, once they are filed with the Commission. Nevertheless, we question whether all issuing authorities truly have a need to receive all these materials in all instances. Should individual issuing authorities seek to receive Commission filings in specific instances, we would urge them to contact us so we can promptly forward them to the appropriate local officials.

39. The same holds true for public materials in the hands of cable operators. In the past, operators have made it a general practice to forward appropriate filings and correspondence addressed to the Commission to all relevant issuing authorities. The Commission expects this practice to continue, and we will continue to urge operators to forward such materials to the affected issuing authorities. In any event, the Commission always stands ready to assist any issuing authority seeking relevant information.

## **G. Proposed 207 CMR 2.03: Statutory Reporting Forms**

### **Proposal**

40. The Commission proposed to remove the actual forms (and the so-called "uniform reporting system" currently applicable to the financial reporting forms) from 207 CMR 7.00, and incorporate these forms by reference in proposed section 2.03. The current forms are specifically referred to by statute in M.G.L. c. 166A, §§ 4, 8 and 10. Section 4 of the statute states that the Commission shall prescribe a license application form. Section 8 calls for the Commission to prescribe certain financial reporting forms. Finally, M.G.L. c. 166A, § 10 directs the Commission to issue a consumer complaint form.

### **Comments and Discussion**

41. For the comments and discussion on this proposal, see Section VIII. 207 CMR 7.00 - FORMS, below.

## **H. Proposed 207 CMR 2.04: Waiver**

### **Proposal**

42. Our current regulations contain waiver provisions in separate chapters. See 207 CMR 3.07, 207 CMR 4.06, 207 CMR 6.85, 207 CMR 8.09 and 207 CMR 10.10. The Commission proposed to create one waiver section at 2.04 applicable to all regulatory waiver requests.

## **Comments**

43. Continental supported the Commission's proposal, but suggested changing the phrase: "*particular* provisions of 207 CMR for good cause shown," to "*any* provision of 207 CMR for good cause shown."<sup>19</sup> Continental suggested that this broader language would remove any ambiguity regarding the extent of the Commission's waiver authority.

## **Discussion**

44. The Commission finds that the proposal should result in a clearer waiver provision, and we have therefore adopted it.

### **III. 207 CMR 3.00 - LICENSING**

#### **A. Proposed 207 CMR 3.00: Licensing**

##### **Proposal**

45. The Commission proposed to consolidate our licensing regulations pertaining to initial and renewal licensing and license amendments at 207 CMR 3.00 - 3.07, 207 CMR 8.00 - 8.09 and 207 CMR 5.00 - 5.07 into one general licensing section under 207 CMR 3.00, entitled "Licensing."

##### **Comments**

46. Industry commenters generally supported the Commission's overall licensing changes, including our proposal to consolidate our licensing rules into one chapter.<sup>20</sup> MassNATOA expressed concern about the proposal to combine these sections, stating that it would be more confusing for communities to consult one omnibus and potentially unwieldy chapter, as opposed to regulations organized by function. Instead, it recommended that if the Commission chose to merge the licensing sections at all, it should include chapter 4.00, not 5.00, which, it proposed, should remain a separate regulation governing contractual provisions.<sup>21</sup>

##### **Discussion**

47. We agree with commenters who advised that a consolidated licensing section should simplify the licensing process for issuing authorities, cable advisory committees, cable operators and consumers, without substantively affecting their rights as participants in that process. Many of our current licensing regulations consist of repetitive provisions, as well as references already included in our enabling statute, M.G.L. c. 166A. Additionally, we believe our substantive changes

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<sup>19</sup>

Continental Comments, pp. 2-3.

<sup>20</sup>

See generally NECTA Comments, p. 2; Time Warner Comments, p. 2; Cablevision Comments, pp. 1, 2.

<sup>21</sup>

MassNATOA Comments, p. 2; Hearing Transcript, pp. 49-51.

are better suited to the current regulatory environment and to the changing nature of the market generally.

48. We do not believe it would be beneficial to incorporate our transfer regulations into our other licensing sections. Licensing negotiations and the license amendment process do not have a lot in common with the transfer process. Different legal standards apply to licensing and transfers. Moreover, last year we substantially revised and updated our transfer regulations. We believe those regulations are working well. Accordingly, the Commission has adopted one omnibus licensing section under 207 CMR 3.00 which consolidates the licensing regulations previously found at 207 CMR 3.00 - 3.07 (Licensing), 207 CMR 8.00 - 8.09 (License Renewals), and 207 CMR 5.00 - 5.07 (Amendment Of A Final License).

## B. Current 207 CMR 3.01: General Provisions

49. Section 3.01 outlines the procedures for initiating the licensing process. We proposed to amend some of these provisions and to replace others with general provisions applicable to all our licensing rules.

### i. Proposed 207 CMR 3.01(1)

#### **Proposal**

50. We proposed to move subsection (3), which discusses access to public records, to subsection (1). We proposed to incorporate into this subsection provisions from current subsection (4), which references documents to be filed with the Commission. We also proposed to include the word “non-privileged,” to identify the types of documents which would be deemed public records under subsection (1).

#### **Comments**

51. NECTA and Continental objected to the use of the word “non-privileged” in this context due to its ambiguity.<sup>22</sup> Continental stated that, as a matter of public records law and policy, the referenced documents may be confidential for legitimate business reasons, even if they are not privileged as a matter of evidence law. Continental therefore proposed that we replace this term with the phrase “Consistent with Massachusetts General Laws Chapter 66.”<sup>23</sup>

#### **Discussion**

52. Upon further consideration, we agree with NECTA and Continental that use of the term “non-privileged” in this context may be both ambiguous and confusing. We have replaced it with the language suggested by Continental.

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<sup>22</sup> Continental Comments, p. 4, 5; NECTA Comments, p. 7; Hearing Transcript , pp. 32, 46, 47.

<sup>23</sup> Continental Comments, p. 4.

## **ii. Proposed 207 CMR 3.01(3)**

### **Proposal**

53. The Commission proposed to add this subsection providing for the appointment of a cable advisory committee (“CAC”). This provision was previously located at 207 CMR 3.02(6) and 8.03(5).

### **Comments**

54. Continental and Time Warner requested that the Commission include language in 3.01(3) requiring that CAC duties be put in writing and forwarded to licensees. They stated that the specific delegation of duties to CACs is often unclear and a statement of these responsibilities would resolve such uncertainties in the minds of operators, issuing authorities and CAC members.<sup>24</sup> NECTA proposed provisions to limit an issuing authority’s ability to delegate final licensing authority to CACs<sup>25</sup> and to cite cable advisory committee members’ public meeting law obligations.<sup>26</sup> Cablevision, Time Warner and Continental also requested a provision that would reference the Commission’s August 9, 1996 conflict of interest opinion advising CAC members of their legal obligations under the conflict of interest law, M.G.L. c. 268A.<sup>27</sup>

55. The Town of Lexington disagreed with industry comments in this regard. It stated that any such state involvement would result in our micro-managing the way issuing authorities conduct their license negotiations.<sup>28</sup>

### **Discussion**

56. At a time when competition is on the horizon, issuing authorities and CACs will likely play a much larger role in licensing additional providers. As a result, they will find themselves thrust more into the public eye in such decisions. We believe that putting the duties of CACs in writing would help clarify the role of the CAC. We would like, however, to receive further comments from cable operators and issuing authorities. To that end, we are considering opening a separate inquiry on this issue. In the interim, we would strongly encourage, but we will not now require, issuing authorities to put the duties of CACs in writing.

57. We also decline to adopt proposed language which would limit an issuing authority’s ability to delegate authority to a CAC for the same reasons. Finally, with respect to

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<sup>24</sup> Continental Comments, p. 5, Time Warner Comments, p. 3; NECTA Comments, p. 8. *See also* Hearing Transcript, pp. 63, 67, 68, 72, 73, 81-83.

<sup>25</sup> NECTA Comments, p. 8.

<sup>26</sup> *Id.*

<sup>27</sup> Cablevision Comments, p. 2, Time Warner Comments, pp. 3, 4; Continental Comments, p. 6; Hearing Transcript, pp. 82, 83. *See generally* Massachusetts Cable Television Commission Advisory Opinion: “Conflicts of Interest Arising Out of Membership On A Cable Advisory Committee” (August 9, 1996).

<sup>28</sup> Town of Lexington Comments, p. 3; Hearing Transcript, p. 72.

NECTA's proposed reference to the public meeting law, we find that local governments, through their town counsel, are primarily responsible for advising local officials on this law. We therefore decline to adopt this proposal.

58. Finally, the Commission finds it is appropriate to reference the Massachusetts conflict of interest statute here. In an increasingly competitive environment, CAC members must be especially vigilant to avoid participating in cable-related matters in a way which violates this law. As a result, the Commission will cite the conflict of interest statute at 207 CMR 3.01(3).

### **C. Current 207 CMR 3.02: Initiation of Licensing Process**

#### **Proposal**

59. The Commission proposed to repeal the public hearing requirement prior to initiating the licensing process under subsection (2). The Commission also proposed to amend subsection (3), which requires an issuing authority to prepare and file a written report if the issuing authority declines to pursue this process.

#### **Comments**

60. NECTA commented that whether an issuing authority pursues the licensing process under 3.02(1)(b) or (c), or declines to do so under 3.02(3), it should be required to file a written report stating the reasons for its decision.<sup>29</sup> NECTA urged that, if the issuing authority declined to initiate the licensing process, it be required to send its report to the applicant, the Commission *and* the incumbent licensee, if any.<sup>30</sup>

61. The Town of Lexington supported the repeal of the mandatory hearing requirement in 3.02(2) and urged the Commission to leave this decision to the discretion of the issuing authority.<sup>31</sup> MassNATOA, Attorney August, NECTA, Cablevision and Continental opposed elimination of this initial public hearing requirement.<sup>32</sup> They stated that hearings provide an important forum for public input from cable operators, applicants and other interested parties as the prospects for overbuild franchise applications continue to grow.<sup>33</sup>

#### **Discussion**

62. Under proposed subsection 3.02(2), the Commission sought to simplify the licensing process by leaving the option of whether to hold a public hearing to the discretion of the

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<sup>29</sup> NECTA Comments, p. 9.

<sup>30</sup> NECTA Comments, p. 10.

<sup>31</sup> Town of Lexington Comments, p. 3.

<sup>32</sup> MassNATOA Comments, p. 2; Attorney August Comments, p. 1, ¶ 1; NECTA Comments, p. 9; Cablevision Comments, p. 3; Continental Comments, p. 6, Hearing Transcript, p. 73.

<sup>33</sup> *Id.*

issuing authority. We did not want to compel local governments to conduct such hearings in each and every instance. However, most commenters oppose this change. Upon further consideration, we agree with Attorney August, Cablevision and Continental that holding a public hearing at this stage of the initial licensing process is important for purposes of obtaining valuable input from community members, particularly given the issues raised by an application for an overbuild franchise. Consequently, we have reinstated the public hearing requirement in subsection 3.02(2).

63. We agree with NECTA that it is reasonable, in light of the potential for cable overbuilds, to require issuing authorities to forward the written report under 3.02(3) to the incumbent licensee(s), if any. We have incorporated this proposal at subsection 3.02(3). We find it unnecessary, however, to require the issuing authority to prepare a separate written report on its decision to go forward with the process prior to completing license specifications under 207 CMR 3.03(3).

#### D. Proposed 207 CMR 3.03: Formal Licensing Procedures

##### Proposal

64. The Commission proposed to relocate and amend current section 3.04 relating to licensing procedures at proposed section 3.03. In subsection (3), we proposed to add a 90 day period for the issuing authority to issue a written report. We also proposed to require the issuing authority to approve or deny an application within 60 days following the public hearing. Finally, we proposed to repeal the provisional licensing requirements in current subsections (2) through (6).

##### Comments

65. The Town of Lexington stated that 120 days should be the maximum period for the issuing authority to prepare a written report under subsection (3), rather than our proposed 90 days.<sup>34</sup> Continental recommended that, in order to provide the applicant the basis for its decision, the issuing authority be required to prepare a detailed written decision either granting or denying each application under proposed subsection (5).<sup>35</sup>

66. Attorney August and MassNATO proposed that the provisional licensing provisions be retained.<sup>36</sup> Attorney August stated that “[w]ithout [provisional licensing], towns will be in the position of granting licenses authorizing digging up and wiring a community without a period in which the applicant proves actual (as opposed to stated) readiness for building the local system.”<sup>37</sup>

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<sup>34</sup>

Town of Lexington Comments, p. 4.

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Continental Comments, p. 7.

<sup>36</sup>

Attorney August Comments, p. 1, ¶ 2; MassNATO Comments, p. 2; Hearing Transcript, pp. 51-53, 77-79.

<sup>37</sup>

Attorney August Comments, p. 1, ¶ 2.

## **Discussion**

67. We decline to adopt the Town of Lexington's request to extend the period in which to prepare license specifications to 120 days because we find that three months is sufficient time for local authorities to do so. Consequently, amended subsection (3) will require that the issuing authority complete its report within 90 days of the application deadline. We have adopted Continental's recommendation that we retain current provisions requiring the issuing authority to issue a detailed decision granting or denying a license application at subsection (5). We have included this requirement as part of our final decision to reinstate provisional licensing regulations, as discussed below.

68. We have decided to adopt the recommendations of Attorney August and MassNATOA that we reinstate the provisional licensing regulations at new subsections (5) through (9). While these requirements do extend the licensing process, we are persuaded that they will continue to serve as an important check on a new licensee's commitment to fulfill all obligations under its franchise agreement and state law. We believe that the provisional license requirements are flexible and have not unduly burdened newly-approved licensees or issuing authorities in the past. We also find that it would not be prudent to eliminate this protection at a time when many are anticipating potential competition from cable providers who may be new to the Massachusetts market. In such cases, it will be especially important for communities to retain the ability to monitor new franchisees. Our existing provisional licensing regulations should facilitate these efforts. Consequently, the Commission has retained the provisional licensing provisions, with some minor amendments, at subsections 3.03(5)-(9).

## **E. Proposed 207 CMR 3.04: Grant of Final License**

### **Proposal**

69. The Commission proposed to move Section 3.05 to new section 3.04, adding a new subsection (1). This subsection would replace the repealed provisional license grant provisions located in current 3.04(2), with final license grant provisions. We also sought to repeal much of current subsections (1), (2), (3) and (6), which address primarily provisional licensing issues. We also proposed to add a new subsection (4) calling for the execution of the initial license within 90 days of the decision to grant it. Finally, the Commission sought to delete the provisional license references.

### **Comments**

70. As discussed further in Section D above, issuing authority representatives objected to our proposed repeal of provisional licensing provisions at former 207 CMR 3.04(2)-(6). Attorney August and MassNATOA also stated that issuing authorities would be unable to negotiate

final license terms within 90 days of a license grant as proposed under subsection (4).<sup>38</sup> They assert that this is a task traditionally left to the local governments and that the state should not dictate local government timetables.<sup>39</sup> NECTA advised that this 90 day deadline would be difficult to enforce.<sup>40</sup>

## **Discussion**

71. Given the Commission's decision to retain the provisional licensing requirement, it has altered some of its proposed modifications at 207 CMR 3.04(1) and (2). First, we have omitted the reference to amended subsection (1) since we initially included this subsection to replace the repealed provisional license grant provisions. Next, we have converted proposed subsection (2) back into a new subsection (1), which is an amended version of our original regulation. It will now be retained under new subsection (1). Current subsections (2), (3), (6) and (7) also address provisional licensing issues. Since we have determined that it is in the public interest to retain this requirement, we are retaining these subsections in amended section 3.04.

72. The Commission has determined that our proposed 90 day period between the grant and issuance of an initial license should be removed. Commenters from communities and the industry agreed that this limitation is unrealistic.<sup>41</sup> Because the amount of time needed to complete this process may vary from franchise to franchise, we believe that it serves the public interest to provide the parties the flexibility to execute a provisional license on their own timetable.

## **IV. 207 CMR 8.00 - LICENSE RENEWALS**

### **Proposal**

73. The Commission proposed to move and consolidate current chapter 8.00 into chapter 3.00.

### **Comments**

74. MassNATO recommended that renewal proceedings continue to be governed by a separate rule. The Association argued that maintaining one rule for renewals makes it easier for local officials to find the place in our regulations specifically dedicated to this process.<sup>42</sup> MassNATO recommended, in the alternative, that we repeal our renewal regulations outright in deference to federal law in this area.<sup>43</sup>

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<sup>38</sup> Attorney August Comments, p. 1, ¶ 3; Hearing Transcript, pp. 53-55; 77.

<sup>39</sup> Attorney August Comments, p. 1, ¶ 3.

<sup>40</sup> NECTA Comment, pp. 10, 11.

<sup>41</sup> Hearing Transcript, pp. 53-55, 77.

<sup>42</sup> MassNATO Comments, p. 2; Hearing Transcript, p. 50. *See also* Town of Acton Comments, p. 1.

<sup>43</sup> *Id.* We note that MassNATO stated at the public hearing that the renewal chapter should be combined with chapters 3.00 and 4.00.

## **Discussion**

75. In our view, it would not be beneficial to separate the renewal provisions from our other licensing provisions. The two processes are interrelated in many important ways, including many common regulatory requirements. We therefore find it reasonable to consolidate the renewal regulations under our new general licensing section.

### **A. Current 207 CMR 8.01: General Provisions**

#### **Proposal**

76. The Commission proposed to retain the reference to the federal renewal statute in new section 207 CMR 3.05(1), and otherwise retain or relocate current provisions in 207 CMR 8.01 in the general licensing chapter.

#### **Comments**

77. NECTA proposed that we include language in our new regulations from the Commission's 1982 License Renewal Report and Order ("1982 Report and Order").<sup>44</sup> The Report and Order stated, among other things, that a Massachusetts licensee could expect to be awarded a renewal license if it performed well, proved its worth over the license term, complied with all license provisions and offered a reasonable plan for future services to the cable community.<sup>45</sup> NECTA advised that this statement is both consistent with federal law and important enough to be reiterated in proposed sections 3.05 - 3.06.<sup>46</sup>

#### **Discussion**

78. We do not believe NECTA has offered a convincing case to include language from the 1982 Report and Order. While the 1982 Report and Order includes helpful licensing information, we do not believe that any of this information not already included in our proposed regulations is essential to the renewal process. We find that our current reference to the federal statute, combined with our supplemental state regulations, satisfy both the legal requirements and the regulatory needs of all interested parties. We therefore decline to adopt the recommendation.

### **B. Current 207 CMR 8.03: Issuing Authority: Renewal Procedure**

#### **Proposal**

79. The Commission proposed to repeal section 8.03(3), which addresses the notification following the completion of renewal proceedings under 47 U.S.C. § 546(a).

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<sup>44</sup> NECTA Comments, p. 11.

<sup>45</sup> Report and Order, Docket No. R-7, ¶ 14 (released September 9, 1982).

<sup>46</sup> NECTA Comments, p. 11.

## **Comments**

80. Continental, Time Warner and NECTA requested that the Commission retain current subsection 8.03(3), which requires the issuing authority to send written notification to the operator once ascertainment is completed.<sup>47</sup> Time Warner and Continental noted that the submission of a proposal following the completion of the ascertainment process triggers the four month period during which the issuing authority must decide whether to issue or deny the renewal application under 47 U.S.C. § 546(c).<sup>48</sup> NECTA added that operators should be given at least 21 days advance notice of the close of ascertainment by regulation.<sup>49</sup> Time Warner recommended that, in the event of a preliminary denial, the issuing authority should be required to provide the written basis for that decision.<sup>50</sup> It further suggested that we incorporate compulsory adjudicatory procedures for the parties to follow in the event of a preliminary denial.<sup>51</sup>

## **Discussion**

81. Upon further consideration, the Commission has decided to retain the current notice requirement at the close of ascertainment in 207 CMR 8.03(3) in proposed 207 CMR 3.05(4). We find that this provision continues to be necessary to keep applicants fully informed of their renewal status. We find no compelling evidence, however, to require issuing authorities to provide 21 days notice in advance of closing the ascertainment period. We also believe Time Warner's request for a written preliminary denial statement is a sensible idea. There have been instances over the past year when communities provided no basis for their preliminary denial assessments. We believe a written statement of reasons for a preliminary denial will facilitate renewal negotiations by allowing applicants to know early in the process where they and issuing authorities disagree. This seems both reasonable and fair to both parties and we have therefore added this language at subsection 3.05(5). We specifically find that the benefits inherent in both of these changes outweigh any burdens they may impose on issuing authorities.

82. However, we decline to adopt Time Warner's further request for new administrative procedure provisions. At this juncture, we do not find it necessary to impose a compulsory administrative process upon a preliminary assessment of denial. By statute, the licensee and the issuing authority are responsible for negotiating a renewal license and both should work together to resolve any issues arising out of a preliminary denial. Should *both* parties seek to present such issues in an administrative forum -- whether convened by the Commission or otherwise -- we would support such efforts, *provided* they were conducted in accordance with our statutory appellate role and applicable state and federal law.

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Continental Comments, pp. 10, 11; Time Warner Comments, p. 7; NECTA Comments, p. 15.

<sup>48</sup>

*Id.*

<sup>49</sup>

NECTA Comments, p. 14.

<sup>50</sup>

Time Warner Comments, p. 8.

<sup>51</sup>

*Id.*

## C. Current 207 CMR 8.04: License Renewal Grant or Denial

### Proposal

83. The Commission proposed to retain and amend this section and include it in new section 3.06. We proposed to amend subsection (1) to include a specific reference to 47 U.S.C. § 546(c)(1)(A)-(D), the federal criteria for review of renewal applications. We also proposed to amend subsection (3) to require that the written statement "specifically address" the federal renewal application criteria.

### Comments

84. NECTA and MassNATOA stated that it is not necessary to restate the four criteria for a preliminary denial under federal law.<sup>52</sup> Instead, they suggested that we merely cross-reference the federal statute.<sup>53</sup>

85. NECTA recommended that we prescribe, by regulation, certain information from issuing authorities in the event of a preliminary assessment of denial. For example, NECTA advised requiring a written summary which outlines the differences between the parties arising from the four month renewal discussions, a written enumeration of past performance issues, or elements of the operator's last offer that were inadequate to meet future cable related needs.<sup>54</sup>

86. MassNATOA stated that 47 U.S.C. § 546(c)(1)(A)-(D) already provides criteria to be considered by the issuing authority *after* a preliminary assessment of denial has been issued. Therefore, it does not understand why the Commission referred to these as the criteria to use *before* an initial assessment is issued.<sup>55</sup>

87. Continental supported the Commission's proposal requiring a written statement detailing the reasons for a denial at 3.06(1), advising that it will assist operators to prepare for administrative proceedings under federal law. It also recommended language stating that, if there is an administrative proceeding following a preliminary denial, the issuing authority has the burden to prove that the cable operator has not substantially complied with the provisions of 47 U.S.C. § 546(c)(1)(A)-(D).<sup>56</sup>

88. NECTA also stated that the Commission should include language to address the issue of expired licenses. NECTA proposed provisions which would require parties to continue to engage in good faith negotiating sessions on a bi-weekly basis during any short-term renewal

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<sup>52</sup> NECTA Comments, pp. 11,12.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, p.12.

<sup>55</sup> MassNATOA Comments, p. 3.

<sup>56</sup> Continental Comments, p. 10.

situation.<sup>57</sup> NECTA also submitted that the new regulations should apply to license renewals currently in progress and suggested that we advise the parties whether the regulatory changes will apply to current renewal proceedings.<sup>58</sup>

## **Discussion**

89. The Commission has decided to retain the four criteria for a preliminary denial under federal law. While we acknowledge that they merely repeat federal law, these elements are so crucial to the renewal process that they warrant restatement in our rules.

90. The Commission declines to adopt the proposal put forth by NECTA that we include provisions requiring the parties to submit a written summary of differences between them leading to a preliminary denial. We find that such issues should be left to the parties, absent a formal appeal to the Commission or substantial evidence submitted in this or other proceedings indicating that specific aspects of the renewal process unfairly benefit one party over another.

91. We also decline to adopt NECTA's proposal that we require the parties to engage in good faith negotiating sessions on a bi-weekly basis during any short-term renewal. It is apparent to the Commission that the lapse of cable television licenses and related interim efforts to address the license expiration issue are arising with greater frequency in recent years. We also recognize that the situation poses potentially serious legal risks to both operators and issuing authorities. At this juncture, the Commission declines to draft a regulatory response to these developments. The Commission expects, however, all parties to work diligently toward avoiding both license expirations and so-called "short term" or interim renewal agreements which may not be executed in compliance with state law. We also remind the parties of the Commission's policy regarding license expirations outlined in our June 22, 1992 advisory opinion on this issue, in which we advised that "statutory [term] limitations cannot be overridden by the Commission, nor can they be waived by the issuing authority or the licensee, even if both are in agreement."<sup>59</sup>

92. The Commission further declines to adopt Continental's request for language stating that the issuing authority has the burden to prove that the cable operator has not substantially complied with the provisions of 47 U.S.C. § 546(c)(1)(A)-(D). This is an area largely governed by federal law. Furthermore, we have proposed new language requiring the issuing authorities to "specifically address" the federal criteria at 207 CMR 3.06(1)(a)-(d).

93. With respect to MassNATO's concerns about when, by regulation, the parties should consider the federal renewal criteria, it is our view that the parties should be actively considering these critical legal criteria *throughout all stages of the renewal process*. We find that our new regulations continue to reflect this position.

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<sup>57</sup>

NECTA Comments, pp. 14, 15.

<sup>58</sup>

NECTA Comments, p. 15.

<sup>59</sup>

Notice of Advisory Opinion Re: Cable Television License Extensions (June 22, 1992).

94. NECTA's concern about whether the regulatory changes are retroactive is well taken. There are a number of licenses currently under renewal in Massachusetts. Our new regulations are effective December 27, 1996. Legally, they may not be applied retroactively. However, beginning December 27, 1996, all cable activities, including ongoing renewal proceedings, are to be governed by the new regulations. Should this transition pose problems or create confusion on the part of issuing authorities or operators, particularly with respect to ongoing renewal proceedings, the Commission would urge parties to file requests for Commission advisory opinions or regulatory waivers, as appropriate. Such requests should specify the factual circumstances warranting the waiver or opinion, as well as the alternative regulatory approach sought.

#### **C. Current 207 CMR 8.06: Procedure for an Open Bidding Process**

#### **Current 207 CMR 8.07: Grant of a New License**

##### **Proposal**

95. The Commission proposed to retain and amend these sections in new sections 3.07 and 3.08.

##### **Comments**

96. Continental, Cablevision, Time Warner and NECTA stated that the open bidding process provisions in proposed sections 3.07 and 3.08 are unnecessary because the issuing authority may initiate the standard licensing process under section 3.02 at any time.<sup>60</sup> Continental further stated that the licensing process undertaken by the issuing authority following the denial of a renewal application should not differ procedurally from the licensing process initiated at any other time.<sup>61</sup> Time Warner raised similar issues. Time Warner added that referencing the open bidding process in the renewal section only served to confuse issuing authorities.<sup>62</sup>

97. Time Warner also requested that the Commission include level playing field language here. It cited M.G.L. c. 166A, § 16 and Section 101(a) of the Telecommunications Act of 1996 in support of their position.<sup>63</sup> The Town of Lexington objected to this proposal, stating that level playing field requirements are a federal issue.<sup>64</sup>

##### **Discussion**

98. The Commission agrees with commenters who urged that we repeal our open bidding process regulations, for a number of reasons. First, the open bidding process has rarely, if

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<sup>60</sup> Continental Comments, p. 11; Cablevision Comments, p. 4; NECTA Comments, p. 13.

<sup>61</sup> Continental Comments, p. 11.

<sup>62</sup> Time Warner Comments, p. 4.

<sup>63</sup> Time Warner Comments, pp. 4, 5.

<sup>64</sup> Town of Lexington Comments, p. 2.

ever, been used. Second, it is a regulatory creation not mentioned in our enabling legislation. Third, retaining the process would result in a second, largely untested, regulatory layer on top of our already well-established initial licensing procedures beginning at section 3.02. These procedures may be implemented by issuing authorities *at any time*, including the period immediately following the denial of a renewal license. In such instances, the parties may wish to expedite the licensing process, and we would encourage the parties to file a written request to waive applicable regulatory provisions under 207 CMR 2.04.

99. We decline to adopt Time Warner's request that we include level playing language in our regulations. We find this is an issue that, at least for the time being, should be left to operators and issuing authorities to resolve through the license renewal negotiating process.

## V. **207 CMR 5.00 - AMENDMENT OF A FINAL LICENSE**

### **Proposal**

100. The Commission proposed to streamline the current amendment regulations and to incorporate them into the new general licensing section at 3.00.

### **Comments**

101. MassNATOA advised that the amendment of a license under current 207 CMR 5.00 should not be in the licensing section. According to MassNATOA, section 5.00 regulates contractual changes, which are unrelated to the licensing process.<sup>65</sup> MassNATOA further stated that while no real public benefit would accrue from the proposed consolidation, removing specificity from the current regulations, as proposed, would lead to confusion on the part of municipal representatives.<sup>66</sup>

### **Discussion**

102. We find that incorporating streamlined amendment provisions within the license regulations simplifies the regulatory review process for both issuing authorities and cable operators. Any license amendment directly affects the terms of a final license. Therefore, it is reasonable to include the amendment provisions within section 3.00. Accordingly, the Commission hereby incorporates our amendment regulations into one general licensing chapter.

## **A. Current 207 CMR 5.01: Definitions**

### **Proposal**

103. The Commission proposed to repeal the definitions in current section 5.01.

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<sup>65</sup>

MassNATOA Comments, p. 2.

<sup>66</sup>

*Id.*

## **Comments**

104. MassNATOA stated that removing the definitions section at 5.01 would cause readers to get confused about the terms used in the chapter.<sup>67</sup>

## **Discussion**

105. The Commission finds that the current definitions are largely unnecessary and, in certain cases, potentially confusing. For example, the words “amend” and “amendment” do not need to be defined as licensing terms-of-art; their common dictionary definitions are more than adequate for regulatory purposes. Also, the terms “License” and “Final License” have been procedurally defined in earlier provisions of chapter 3.00. Any attempt to further define legal terms here may lead to misunderstandings on the part of issuing authorities and cable operators. In light of this reasoning, we have repealed section 5.01.

## **B. 207 CMR 5.03: Request for Amendment**

### **Proposal**

106. The Commission proposed to incorporate amended provisions from several current sections, including section 5.03, into a new consolidated amendment section at 3.09.

107. First, we recommended adding the word “jointly” to provisions discussing the initiation of the licensing process in proposed subsection (1). We also proposed to retain, with minor amendments, the current requirement in subsection (2) that the issuing authority make available a written amendment report. Additionally, we proposed to add new subsections (3) and (4), which provide for the adoption of the proposed amendment following a 21 day prior public comment period. We also proposed to incorporate amended language from current subsection 5.05(2) into a new subsection (5), requiring the issuance of a written report upon the grant or denial of the license amendment.

## **Comments**

108. Cablevision recommended new language in 3.09 allowing for expedited procedures to implement non-material amendments: “When an issuing authority and a licensee jointly *agree to a material change to the final license* the issuing authority shall. . . .”<sup>68</sup> (Emphasis in original.) Likewise, NECTA, Continental and Cablevision proposed that the Commission add a new provision to facilitate correction of clerical errors or non-substantive changes to licenses.<sup>69</sup> Continental stated that it has often found itself having to follow all of our amendment procedures to

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<sup>67</sup>

MassNATOA Comments, p. 2.

<sup>68</sup>

Cablevision Comments, p. 5.

<sup>69</sup>

NECTA Comments, p. 16; Continental Comments, p. 8; Cablevision Comments, p. 6.

correct clerical or typographical license errors, resulting in an unnecessarily protracted process under the circumstances.<sup>70</sup>

109. MassNATOA stated that when both parties propose an amendment, the expenses should be shared equally by them.<sup>71</sup> NECTA stated that in section 3.09(4) we should replace the phrase “reasonable time” for the adoption of a proposed amendment to a specified time period, such as 21 or 30 days.<sup>72</sup>

110. Continental had several comments with respect to proposed subsections (2) through (5). Specifically, they requested we replace the word “requested” with “proposed” before the word “amendment” in proposed subsections (2), (3) and (4), and they requested we require a 14 day time frame for an issuing authority to adopt a “proposed” amendment at subsection (4).<sup>73</sup> They also requested we require operators and issuing authorities to *jointly* prepare the amendment report at proposed subsection (5).<sup>74</sup> Finally, Continental advised that, after issuing a grant or denial of a license amendment request, we require the issuing authority to issue a written public report within 10 days, rather than within “a reasonable period of time,” as currently proposed in subsection (5).<sup>75</sup>

111. NECTA recommended that the issuing authority be required to submit to the Commission only the amended language, not the entire amended license, under subsection (5).<sup>76</sup>

## Discussion

112. We have decided not to adopt requests by Cablevision, NECTA, and Continental that we add a provision expediting the regulatory process for correcting clerical errors or for making other minor, non-substantive changes to licenses. Despite thoughtful input on this question, we are troubled by the difficulty of reasonably defining what constitutes a “corrective” or “non-substantive” amendment. Consequently, we do not believe it is appropriate to include such a provision in the regulations. However, we would strongly encourage parties to jointly seek waiver(s) from some or all of our amendment regulations in the event the parties seek to expedite what they both view as “non-substantive” or “non-controversial” license amendments. This will allow the Commission to evaluate on a case-by-case basis whether the proposed amendment(s) warrant the protections of all our regulations or whether certain provisions may properly be waived.

113. We agree with MassNATOA that since both parties must jointly propose an amendment, expenses should be borne equally by the parties. We have therefore incorporated this language into new section 3.07.

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<sup>70</sup> Continental Comments, p. 8.

<sup>71</sup> MassNATOA Comments, p. 2.

<sup>72</sup> NECTA Comments, p. 15.

<sup>73</sup> Continental Comments, Attachment 3.09(3), (4), p. 1.

<sup>74</sup> Continental Comments, Attachment 3.09(2), p. 1.

<sup>75</sup> Continental Comments, Attachment 3.09(5), p. 1.

<sup>76</sup> NECTA Comments, pp. 15, 16.

114. We have incorporated Continental's specific recommendations into the text of our final regulations at subsection (2). We find that the following suggested changes serve to clarify that these provisions govern the parties' *joint efforts* to amend license provisions:

(2) Report on Request for Amendment. Coincident with publication of notice of any ~~request for an proposed~~ amendment, the issuing authority shall make available to the public in the city or town clerk's office a written report, prepared by the ~~party initiating the request for an amendment~~ issuing authority and cable operator, which shall:

- (a) Identify the licensee, the full text of the proposed amendment, and the purpose for which the ~~requested~~ amendment is being made;
- (b) Describe the probable effect(s) of the proposed amendment on consumers and any other concerned parties.

115. We also find reasonable Continental's request to add the word "proposed" prior to the word "amendment" in subsection (3), and have included it as well. We decline to adopt their proposal for a time limit on the adoption of a proposed amendment at subsection (4). Given that amendments must be jointly proposed by the issuing authority and the licensee, both parties should continue to have the discretion to decide when to adopt the amendment.

116. We decline to adopt NECTA's suggestion that the issuing authority be required to submit to the Commission only the amended license provisions, rather than resubmitting the entire amended license, under subsection (5). We find the requested information is reasonable and should allow interested parties to timely obtain updated licenses from the Commission. We have adopted Continental's recommendation that an issuing authority should issue a written public report within 10 days at subsection (5), rather than the current "reasonable period of time." The 10 day period, which we specifically find to be reasonable, should facilitate a timely final resolution of the amendment process.

### **C. Current 207 CMR 5.04: Hearing On Request for Amendment**

#### **Proposal**

117. The Commission proposed to repeal section 5.04, which sets forth the procedures for obtaining a hearing on proposed license amendments.

## **Comments**

118. MassNATOA advised that it is not necessary to repeal the public hearing provisions in current section 5.04.<sup>77</sup> Attorney August commented that the public should have a right to pursue procedures leading to a hearing on a license amendment because the entire license could be changed by amendment.<sup>78</sup>

## **Discussion**

119. While we agree with MassNATOA and Attorney August that, in certain cases, the public should have a right to a hearing on a license amendment, we believe that this issue is best left within the discretion of the issuing authority. We specifically find that elected municipal representatives are in the best position to make this decision. We also note that we have replaced the hearing provisions with a new mandatory public comment period at section 3.07(3), and we have also retained the complaint procedures at section 3.08. We believe that these provisions will continue to provide for public input and recourse in the event an issuing authority were to propose amendments which were not in the best interests of the community. For these reasons, we have repealed the hearing requirement in section 5.04.

## **D. Current 207 CMR 5.06: Complaint Provisions**

### **Proposal**

120. The Commission proposed to retain the current complaint provisions at section 5.06 in a new section 3.10.

### **Comments**

121. NECTA stated that the complaint provisions are rarely used and recommended that they be repealed.<sup>79</sup> They submitted that the section creates a standardless review process not specifically authorized by Chapter 166A. NECTA also advised that the section conflicts with Executive Order No. 384 to the extent that it addresses no specific need for governmental intervention that is clearly identified and expressed.<sup>80</sup>

## **Discussion**

122. We find that § 16 of c. 166A delegates broad authority to the Commission to promulgate and enforce regulatory provisions such as new section 3.08. Importantly, we do not seek to expand existing complaint provisions, only to retain those already in our regulations. In

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<sup>77</sup> Hearing Transcript, pp. 55, 56.  
<sup>78</sup> Attorney August Comments, pp. 1, 2, ¶ 4.  
<sup>79</sup> NECTA Comments, p. 16.  
<sup>80</sup> *Id.*

light of our repeal of section 5.04, which currently offers a petition process to those who seek a public hearing on a proposed amendment, we find that it is reasonable to retain this provision.

## **E. Proposed 207 CMR 3.09: Rights of Appeal**

### **Proposal**

123. The Commission proposed to consolidate separate appeal provisions currently found in 207 CMR 3.06 and 207 CMR 8.08 into a general appellate section at proposed section 3.11.

### **Comments**

124. NECTA stated that this section, as written, may be inconsistent with federal law which, under some circumstances, would allow for appeals to federal court under 47 U.S.C. § 555. They suggested new language clarifying that this provision would relate only to appeals to the Commission.<sup>81</sup>

### **Discussion**

125. The Commission accepts NECTA's proposal as reasonable. Chapter 166A, § 14 does not preclude the parties from pursuing appellate rights which may be available under federal law. We have therefore incorporated language under new section 3.09 consistent with NECTA's recommendation.

## **VI. 207 CMR 4.00 - TRANSFER OR ASSIGNMENT OF CONTROL OF A FINAL LICENSE**

### **Proposal**

126. Given our comprehensive transfer rulemaking issued on November 27, 1995, we proposed to retain virtually all of our current transfer regulations.

### **Comments**

127. Continental recommended that the Commission delete the notice requirement in 4.03(1), ¶ 2 and incorporate these provisions into a general notice provision at Section 2.02.<sup>82</sup> MassNATOA advised that we combine initial licensing, license renewals and license *transfers*, not amendments, into our general licensing section.<sup>83</sup> The Town of Lexington stated that while a transfer of control between commonly controlled entities is not a transfer, our regulations should

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<sup>81</sup> NECTA Comments, p. 17.

<sup>82</sup> Continental Comments, p. 8.

<sup>83</sup> MassNATOA Comments, p. 2; Hearing Transcript, p. 56.

require that a transfer be deemed to have occurred if the controlling entity does not affirmatively agree to abide by all prior license obligations.<sup>84</sup> NECTA, Cablevision and Continental generally supported our proposal to largely retain our recently amended transfer regulations.<sup>85</sup>

## **Discussion**

128. The Commission adopts Continental's suggestion to delete the notice requirement in 4.03(1) and incorporate these provisions into section 2.02. Since one goal of this rulemaking is to streamline and simplify the regulations, we find it reasonable to move the notice requirement to the general notice section at 207 CMR 2.02. In addition, we have retained language that references the recording methodology requirement. This requirement has been incorporated into new subsection (2).

129. We respectfully disagree with MassNATOA's assertion that the transfer regulations belong in the general licensing section at 207 CMR 3.00. As mentioned in Part III, Section A, different standards of review apply to a license transfer and license issuance. For example, a central issue in the transfer process is determining whether there has been a change in control of the licensee. Additionally, the procedures involved in these two areas are divergent. For these reasons, the Commission finds that it is reasonable to keep these regulations in two separate chapters. We also decline to adopt the Town of Lexington's suggestion that we redefine what constitutes a transfer. We find that the current transfer of control provisions at 4.01 both adequately and reasonably define this area.<sup>86</sup>

130. Finally, we have incorporated an appellate review section at 4.06. While this requirement is statutorily defined, we believe that this is an important procedural right and, as such, it should be cited in the transfer regulations as it has been in the licensing regulations.

## **VII. 207 CMR 6.00 - RATE REGULATION**

### **A. Proposal for Chapter**

131. The Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") mandated regulation of the rates charged by cable television operators. The FCC rate regulations adopted pursuant to the 1992 Cable Act, 47 C.F.R. §76.901 - §76.987, provide rate setting standards applicable to basic service tier rate and equipment regulation. The 1992 Cable Act also prescribes that a franchising authority (in this case, the Commission) which has been certified as the basic service tier rate regulator, shall adopt and administer rate regulations which are consistent with the regulations issued by the FCC.

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<sup>84</sup>

Town of Lexington Comments, p. 5.

<sup>85</sup>

NECTA Comments, p. 2; Cablevision Comments, p. 2 and Continental Comments, p. 7.

<sup>86</sup>

*See generally* Massachusetts Cable Television Report and Order Transfer Guidelines, Docket No. R-24 (November 27, 1995).

132. In 1993, the Commission adopted rate regulations comprising 31 sections spread over 16 pages of text. The Commission now has proposed that most of its current rate regulations be replaced by streamlined provisions, incorporating by reference into our regulations both the FCC's rate regulations and the procedural regulations of the state's Administrative Procedures Act, M.G.L. c. 30A. Along with the addition of three new sections referencing applicable federal and state law, we proposed to retain and amend two of our existing provisions, section 6.31 and subsection (1) of section 6.37, which apply to the Commission's rate setting authority and certain hearing and notice requirements.

133. We received very few comments in response to the Commission's proposed changes to its rate regulations, which we interpret as assent to the proposed changes, except as noted below. We have therefore adopted all of our initial proposals. The comments that *were* offered are discussed below.

## B. Current 207 CMR 6.31: Commission Regulation

### Proposal

134. The Commission proposed to rename this section "Commission Rate Regulation", and to move it to new section 6.04. The section provides that the Commission shall regulate basic service tier and equipment rates at the request of an issuing authority or upon its own initiative.

### Comments

135. Continental proposed that the Commission consider allowing geographic uniformity of rates,<sup>87</sup> but otherwise supported the Commission's proposed change.<sup>88</sup> Cablevision recommended that the Commission amend proposed section 6.04 to allow for geographically averaged rates over multiple systems for the basic service tier.<sup>89</sup> Cablevision also proposed that a new subsection 6.04(3) be added, which would allow the Commission to automatically decertify itself as the regulator for basic service tier rates in the event of effective competition.<sup>90</sup>

### Discussion

136. The Commission has actively supported the idea of allowing uniform basic tier programming rates over broad geographic areas.<sup>91</sup> Nevertheless, we have concluded that the FCC's current rate regulations and forms do not currently permit the averaging of programming rates. The

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<sup>87</sup> Hearing Transcript, pp. 101-103.

<sup>88</sup> Continental Comments, p. 14.

<sup>89</sup> Cablevision Comments, pp. 6-8.

<sup>90</sup> *Id.*, p. 8.

<sup>91</sup> See Comments of the Massachusetts Cable Television Commission, Re In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation: Uniform Rate-Setting Methodology, Notice of Proposed Rulemaking, CS Docket 95-174 (February 12, 1996).

Commission awaits the FCC's final order in its ongoing proceeding on uniform rate-setting methodology, CS Docket 95-174.<sup>92</sup> Should the FCC issue an Order allowing uniform rate-setting, the Commission fully intends to apply these regulations to rate proceedings within Massachusetts.

137. The Commission has considered the proposal that it automatically decertify itself as the rate regulator should an operator meet the federal "effective competition" criteria within a franchise area. Again, however, this would appear to be an FCC regulatory function. The Commission intends to support prompt decertification of its status as rate regulator in a given franchise area in the event of effective competition in that franchise. We note that this step was recently taken by the New Jersey Board of Public Utilities in the recent FCC decertification proceeding involving Dover Township, New Jersey.<sup>93</sup>

138. The Commission accordingly adopts sections 6.01 through 6.05, as proposed, and repeals the remaining rate regulations.

## VIII. 207 CMR 7.00 - FORMS

### **Proposal**

139. The Commission proposed to remove the forms and the uniform system of accounts from our regulations, repealing 207 CMR 7.01 through 7.03. A regulation supplementing the statutory provisions authorizing these forms is proposed to be included as new section 207 CMR 2.03.

### **Comments**

140. The Town of Lexington mentioned the administrative advantage of removing the forms from the regulations, but wanted the regulations to contain mandatory provisions for public involvement, including hearings, if the forms were to undergo substantive changes.<sup>94</sup> MassNATOA advised that removing the forms from the regulation was "ill-advised and unnecessary."<sup>95</sup> Attorney August expressed his opposition to removing the forms, because their removal would increase the burdens on cable advisory committee members, who would no longer be able to find them in one location.<sup>96</sup> Attorney August also expressed his concern that if chapter 7.00 were repealed, forms could be revised without the benefit of any public participation. In

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<sup>92</sup> In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation: Uniform Rate-Setting Methodology, Notice of Proposed Rulemaking, CS Docket 95-174 (released November 29, 1995).

<sup>93</sup> In the Matter of Clear Cablevision, Inc. d/b/a Adelphia Cable Communications, Petition for Special Relief to Revoke the Certification of the New Jersey Board of Public Utilities to Regulate Basic Cable Rates in Dover Township, New Jersey, CUID No. NJ0160, DA 96-1691, Memorandum Opinion and Order (released October 10, 1996).

<sup>94</sup> Hearing Transcript, p. 10; Town of Lexington Comments, pp. 2-3.

<sup>95</sup> MassNATOA Comments, p. 1; Hearing Transcript, p. 12.

<sup>96</sup> Hearing Transcript, pp. 17-20, 26, 43-45 (Attorney August); Attorney August Comments, p. 2, ¶ 6.

contrast, Cablevision, Continental, NECTA and Time Warner all supported the removal of the forms from the regulations.<sup>97</sup> Several of these commenters supported the Commission's position that we intend to solicit input from interested parties, including issuing authorities, when we update the forms next year.

## **Discussion**

141. As stated in our Notice, the applicable administrative regulations provide that “[r]egulations shall be in conformance with the Secretary’s policies as stated in the Regulations Manual.”<sup>98</sup> The Regulations Manual states that “[f]orms by their nature are not regulations and should not be part of a regulation.” (Emphasis added.) The Commission finds that removing the forms and the uniform reporting system from the regulations should be beneficial to the Commission and others who use these forms. It will allow the Commission the flexibility to routinely amend the forms, some of which date from the early years of cable franchising. Furthermore, the increasingly competitive telecommunications market is likely to require occasional and substantial changes in the forms, in order that issuing authorities and the Commission obtain the most pertinent, updated information. Such updates should not be subject to a lengthy regulatory hearing process.

142. In the interim, all parties should be assured that the Commission will continue to require all operators to complete our current statutory reporting forms: the license application form, “CATV Form 100,” the three financial reporting forms, “CATV Forms 200, 300, and 400,” and our complaint forms, “CATV Forms 500A, B and C.” When completing the financial reporting forms, parties should continue to follow the uniform reporting system rules referred to in 207 CMR 2.03. Following the issuance of our new regulations, we intend to conduct a careful review of all our current forms and, as appropriate, to update them to reflect changes in the information needs of the Commission. During this review, the Commission will seek input on any proposed revisions from interested parties, *including both cable operators and issuing authorities*. After due consideration, the Commission repeals sections 7.01 through 7.03.

## **IX. 207 CMR 9.00: CONSUMER REGULATIONS - SECURITY DEPOSITS**

### **Proposal**

143. The Commission proposed to repeal its present consumer regulations on security deposits at 207 CMR 9.10-9.15.

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<sup>97</sup> Hearing Transcript, pp. 27-29 (Time Warner), 32-33 (NECTA), 35-38 (Continental), 41 (Cablevision); Continental Comments, pp. 3-4; NECTA Comments, pp. 6-7; Time Warner Comments, p. 6.

<sup>98</sup> 950 CMR 20.03(6).

## **Comments**

144. Attorney August questioned the repeal of this chapter.<sup>99</sup> His primary concerns were that interest be paid on security deposits, and that there be “some limitation relating the amount of the security deposit to the approximate cost of the device.”<sup>100</sup> He also noted that “requiring interest on security deposits can prevent abuse of customers by new entrants.”<sup>101</sup>

## **Discussion**

145. The Commission recognizes Attorney August’s concerns as legitimate. We have concluded that it is appropriate to retain limited provisions within our regulations governing subscribers’ security deposits at new section 5.08, located at the end of our proposed billing regulations. New section 5.08 provides the following protections: Cable operators may not require a security deposit which exceeds the cost of the equipment. Subscribers shall continue to receive 7 percent annual interest on their security deposits. Finally, cable operators will continue to be required to return deposits within 30 days after the subscriber returns the equipment.

146. After due consideration, the Commission repeals chapter 9.00 in its entirety, and adopts new section 5.08 to address the issues raised by Attorney August.

## **X. 207 CMR 10.00 - BILLING AND TERMINATION OF SERVICE**

### **A. Proposal for Chapter**

147. The Commission proposed to retain and amend our Billing and Termination of Service rules, currently located in chapter 10.00, in a new chapter 5.00.

### **B. Current 207 CMR 10.01: Notification of Billing Practices**

#### **Proposal**

148. The Commission proposed to streamline and simplify current subsection 10.01(1), relating to the information which must be provided in the cable operator’s notice of billing practices. The Commission proposed language requiring that this written notice be given before the cable operator entered into a subscription agreement with the consumer. We proposed to incorporate the remaining subsections of 10.01 into new section 5.01 without material change.

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<sup>99</sup>

Hearing Transcript, pp. 94-95, 97.

<sup>100</sup>

*Id.*, p. 95.

<sup>101</sup>

Attorney August Comments, p. 2, ¶ 5.

## **Comments**

149. Continental and NECTA objected to language in proposed subsection 5.01(2) (also in the Commission's current regulations at subsection 10.01(3)), which requires copies of the operator's billing practices notice, work order and sample subscriber bill to be filed by March 15th of each year with the Commission, the issuing authority, and the operator's local office.<sup>102</sup> Continental proposed that "these regulations be changed to allow cable operators to produce these documents at other dates annually as may be appropriate for the individual cable operator."<sup>103</sup> NECTA expressed a similar opinion. Continental also proposed to remove the word "local" from the requirement in proposed subsection (2) that the billing practices notice and related materials be filed with the company's "local office."<sup>104</sup> Continental stated that "many cable operators including Continental are clustering their operations in order to achieve economies of scale for their cable operations," making it difficult for operators to direct such efforts "locally."<sup>105</sup> Finally, Time Warner proposed that subsection (3) begin with the phrase "At least" to give operators greater flexibility with respect to timing of notice of a billing practice change.<sup>106</sup>

## **Discussion**

150. The Commission has concluded that it will adopt section 5.01 as initially proposed, except for Time Warner's proposed addition. We believe that the due date for the annual filing of the operator's billing practices notice, work order and sample subscriber bill should be uniform for all operators. This will continue to insure a clear and efficient tracking process at the Commission. With respect to the proposal to change the phrase "local office" in subsection (2) to "office," the Commission believes it appropriate to continue to use this term, despite the industry trend toward consolidation. The current regulation directs cable operators to maintain consumer information at offices located close to the subscribers they serve. We find this to be reasonable, in the public interest, and not unduly burdensome to operators. In response to Time Warner's recommendation, the Commission has also added the phrase "At least" to the beginning of subsection 5.01(3), which provides for 30 days notice of changes in billing practices. We believe this proposal is reasonable.

## **C. Current 207 CMR 10.02: Notification of Services, Rates and Charges**

### **Proposal**

151. The Commission proposed making only minor changes to the first three subsections and subsection (7), and to retain subsections (4), (5) and (6) in their current form, in a new section 5.02. The first four subsections concern cable operators' notification to subscribers of services and rates before and during the provision of service. The Commission proposed to explicitly specify, in

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<sup>102</sup> Continental Comments, p. 12; NECTA Comments, pp. 17-18.

<sup>103</sup> Continental Comments, p. 12.

<sup>104</sup> *Id.*, pp. 12-13.

<sup>105</sup> *Id.*, p. 12.

<sup>106</sup> Time Warner Comments, pp. 8, 9.

subsections (1) through (3), that this information would be provided upon request from a subscriber. Subsection (5) requires that 30 days advance notice of increases in rates or substantial changes in service be provided to the Commission and the issuing authority, as well as to the subscriber. Subsection (6) requires cable operators to file a copy of their programming services, rates and charges by March 15th of each year with the Commission, the issuing authority and the company's local office. Subsection (7) prohibits cable operators from charging for services the subscriber has not requested.

## Comments

152. Cablevision urged the Commission to allow for the sunset of proposed subsection (5) once an operator faces effective competition.<sup>107</sup> This subsection, unchanged from the current subsection 10.02(5), requires an operator to provide 30 days advance notice of a rate increase or a substantial change in the number or type of programming services. Cablevision observed that "if a cable operator was competing with a non-franchised provider such as an MMDS operator, the cable operator would be forced to telegraph its marketing plans by giving a 30-day notice, allowing the MMDS competitor to immediately alter its pricing. Conversely, this regulation would preclude an operator from swiftly responding to a marketing effort of an unregulated competitor..."<sup>108</sup>

153. Time Warner raised two issues with respect to proposed subsection (5).<sup>109</sup> First, it proposed that the words "At least" be added prior to "30 days," so that cable operators would have the legal flexibility to provide even longer advance notice of service and rate changes. Time Warner also suggested that the Commission delete other provisions in subsection (5) which prescribe the specific contents of the notice. It noted out that the Telecommunications Act of 1996 allows a cable operator to "provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion."<sup>110</sup> Time Warner proposed alternative language for subsection (5), which would allow a cable operator to provide notice "using any reasonable written means at its sole discretion."

154. Continental objected to the March 15th deadline contained in subparagraph (6) for the annual filing of a cable operator's programming services, rates and charges for the same reasons that it objected to this deadline for the annual filing of the billing practices notice required by proposed subsection 5.01(2).<sup>111</sup> Similarly, Continental proposed deleting the word "local" from subsection (6).<sup>112</sup>

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<sup>107</sup> Cablevision Comments, p. 6.

<sup>108</sup> *Id.*

<sup>109</sup> Time Warner Comments, pp. 8-10.

<sup>110</sup> 47 U.S.C. § 552(c); Communications Act § 632(c).

<sup>111</sup> Continental Comments, p. 12.

<sup>112</sup> *Id.*, pp. 12-13.

155. The Town of Lexington questioned why the phrase “each of its subscribers” was removed from proposed section 5.02.<sup>113</sup> In place of this phrase, the Commission had added the phrase “upon request from a subscriber” at proposed subsections (1) through (3). The Town of Lexington felt that notice of such changes should go to subscribers regardless of whether they specifically request it. MassNATOA expressed concern that the proposed regulations repealed the requirement that *existing* subscribers receive information on the operator’s billing practices.<sup>114</sup>

156. The Town of Acton questioned what a “fundamental change” meant in proposed subsection (7), which prohibits negative option billing if a fundamental change occurs in the nature of the existing service or tier of service.<sup>115</sup> The Town of Acton suggested that a clearer definition was needed.

## Discussion

157. Following receipt of the comments, the Commission changed the order of the first five subparagraphs in proposed section 5.02. Proposed subsection (4), which directs operators to give notice of services, rates and charges before a subscription agreement is reached, has been renumbered as subsection (1). This order is preferable because it begins the section with the notice required before the commencement of a subscriber’s cable service. Proposed subparagraph (5), relating to the 30 days notice of a rate increase or a substantial service change, has been renumbered as subsection (2). This provision is also more appropriately located at the beginning of the section. Proposed subparagraphs (1), (2) and (3), relating to subscribers’ requests for information on rates and service charges, have been moved to subparagraphs (3), (4) and (5), respectively.

158. The Commission believes that the 30 day notice provision in new subsection (2) should be amended to allow operators the flexibility to provide notice of service or rate changes earlier than 30 days in advance. We therefore adopt Time Warner’s proposal to add the phrase “At least” at the beginning of this provision. We decline, however, to adopt Cablevision’s proposal that we allow for the sunset of this notice in the event of effective competition. The notice provides consumers with an opportunity to prepare for a rate increase, including, if necessary, canceling their subscription. Furthermore, the notice provision only applies to rate *increases*. In response to competition, operators are free to move both quickly and without advance public notice if they choose to *decrease* their rates.

159. With respect to Time Warner’s comments on the effect of the Telecommunications Act of 1996, the Commission submits that the phrase in the new § 552(c), “using any reasonable written means at its sole discretion,” does not preclude additional state or local regulation in this area. The Commission notes that federal law also continues to provide that “[n]othing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any state law, concerning customer service that imposes customer service requirements that

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<sup>113</sup>

Town of Lexington Comments, p. 5.

<sup>114</sup>

MassNATOA Comments, p. 3.

<sup>115</sup>

Town of Acton Comments, p. 3.

exceed the standards set by the [FCC] under this section, or that addresses matters not addressed by the standards set by the [FCC] under this section.”<sup>116</sup> The Commission will retain proposed language regarding billing information.

160. The Commission also finds it appropriate to retain the March 15th deadline and the reference to the local office in proposed subsection (6). As is the case regarding an operator’s billing practices notice, work order and sample subscriber bill under proposed subsection 5.01(2), having one uniform deadline is more efficient for the Commission. We will also retain the phrase “local office” in proposed 5.02(6), because it will ensure that this information will be provided to those offices of the cable operator which are closest to the subscribers at issue.

161. With respect to concerns about whether all subscribers will receive notice of current rates and services, the Commission observes that all subscribers will continue to receive such notification under subsection (1) when they initially contract for cable service, and under subsection (2) whenever a rate increase or substantial service change occurs. The current language appears to require notices to all current subscribers, regardless of whether they reflect rate or service *changes*. The Commission believes its proposed changes allowing subscribers to request rate and service information as necessary is a more sensible and less burdensome approach.

162. The term ‘fundamental change’ appearing in proposed subsection (7) is a term used by the FCC in its own negative option billing provision, 47 C.F.R. § 76.981(b), from which subsection (7) was derived. The Commission will rely upon the FCC’s interpretation of this phrase, and will retain it in its regulations.

#### **D. Current 207 CMR 10.03: Equipment Notification**

##### **Proposal**

163. We proposed to repeal this section, which requires operators to give subscribers detailed information pertaining to the possession and use of cable television equipment.

##### **Comments**

164. The Town of Lexington recommended that this provision be retained.<sup>117</sup> The Town observed that if equipment is provided to the subscriber, the operator should be required to provide a full written description of how it works.

##### **Discussion**

165. We find that the Town of Lexington’s concern should be satisfied by the cable operators’ self-interest in ensuring that subscribers are familiar with the equipment they are

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<sup>116</sup>

47 USC § 552(d)(2).

<sup>117</sup>

Town of Lexington Comments, p. 5.

provided and understand how to use it properly. The Commission notes that these regulatory requirements are not currently imposed upon consumer electronics or direct broadcast satellite manufacturers or distributors, both of whom sell or lease comparably sophisticated equipment directly to consumers. After due consideration, the Commission therefore repeals section 10.03.

#### **E. Current 207 CMR 10.04: Form of Bill**

##### **Proposal**

166. The Commission proposed that this section, which requires that certain information be included in subscriber bills, be streamlined and incorporated into new section 5.03.

##### **Comments**

167. Continental expressed concern that proposed subsection (1)(a) continues to require that a cable operator include its “local address and telephone number” on its bills.<sup>118</sup> As in the case of proposed subsections 5.01(2) and 5.02(6) above, Continental requested that the word “local” be deleted.

168. The Town of Lexington noted that proper billing itemization is vital to the consumer. It observed that “[o]ther utility bills tend to have itemization according to prescribed rules, and greater itemization - rather than less - appears to be the trend.”<sup>119</sup>

##### **Discussion**

169. The Commission has concluded that the use of the phrase “local address and telephone number” in proposed section 1(a) is appropriate. We note that M.G.L. c. 166A, § 5(o), requires cable operators to include a commitment to “the maintenance of local offices or local telephone connections in the communities served” in their license applications. The Commission’s use of the word “local” in proposed subsection (1)(a) therefore conforms with the statute.

170. With respect to the concerns of the Town of Lexington, the Commission believes that proposed section 5.03 will insure consumers are provided clear and adequate billing information, without micro-managing the billing practices of individual operators.

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<sup>118</sup>

Continental Comments, pp. 12-13.

<sup>119</sup>

Town of Lexington Comments, p. 5.

**F. Current 207 CMR 10.06: Billing Due Dates, Delinquency, Late Charges and Termination of Service**

**Proposal**

171. Current section 10.06 regulates a wide range of billing issues, including payment due dates, delinquency, late payment fees, service termination and returned check charges. We sought to incorporate this section into a new section 5.05, with some non-substantive amendments aimed at streamlining the current provisions.

**Comments**

172. Continental and NECTA questioned proposed subsection (1), which stated that subscriber payments be due *ten* business days following the mailing date of the bill, instead of the *five* business days provided for in the current subsection 10.06(1).<sup>120</sup> Continental noted that this doubled the length of time between the mailing and the due date, and that “[d]oubling this amount of time will have implications for Continental’s cash flow position.”<sup>121</sup> Furthermore, Continental noted that bills are not delinquent until 30 days following the due date under subsection (2). NECTA advised that “the current five-day provision, which has been in effect for many years, is one to which cable subscribers and cable operators have become well-accustomed.”<sup>122</sup>

**Discussion**

173. We have concluded that our proposal to extend the due date for a subscriber’s payment to ten business days after the mailing date of the bill was in error. We note that under our regulations, *no subscriber account may be considered delinquent for at least 30 days after the bill due date*.<sup>123</sup> Furthermore, no late charges may be imposed by the operator until at least eight business days from the date of delinquency.<sup>124</sup> Upon further reflection, then, we find that this allows subscribers enough time to pay their bill before having their service terminated. Accordingly, the Commission has reinstated the current language found in subsection 10.06(1), which states that the due date shall not be less than five business days following the mailing date.

**G. Current 207 CMR 10.08: Service and Billing Disputes**

**Proposal**

174. The Commission proposed that the title of this section be changed to “Billing Disputes,” and that it be amended and incorporated into proposed section 5.07.

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<sup>120</sup> Continental Comments, pp. 13-14; NECTA Comments, p. 18.

<sup>121</sup> Continental Comments, p. 13.

<sup>122</sup> *Id.*

<sup>123</sup> 207 CMR 5.05(2).

<sup>124</sup> 207 CMR 5.05(3).

## **Comments**

175. Time Warner observed that proposed subsection (1) still requires an operator to provide notification of the results of its billing dispute investigation within 15 working days of the receipt of the complaint.<sup>125</sup> Time Warner noted that the FCC's customer service regulations give a cable operator 30 days to respond to a written complaint from a subscriber.<sup>126</sup> Proposed subsection (4), Time Warner observed, provides that final action on a billing dispute shall be deemed to have occurred 30 days after the filing of a complaint. Time Warner therefore suggested changing the 15 days to 30 days, to make the regulation comport with both federal regulations and our other regulations.

## **Discussion**

176. The Commission has concluded that Time Warner's proposal has merit, because it will remove an inconsistency between proposed subsections (1) and (4), and provide the same period contemplated by parallel federal regulations. In addition, it will enable cable operators additional time to complete their investigations without being in violation of a regulation. Accordingly, the Commission will amend proposed subsection (1) to give an operator 30 days, rather than 15 days, to respond to the receipt of a complaint.

## **J. Current 207 CMR 10.09: Service Interruptions**

### **Proposal**

177. In light of pre-existing statutory service interruption provisions in M.G.L. c. 166A, § 5(l), the Commission proposed to repeal section 10.09 as unnecessary.

## **Comments**

178. The Town of Lexington saw no reason to eliminate the provisions allowing for bill credits to customers whose service has been interrupted.<sup>127</sup>

## **Discussion**

179. Our statute already requires a pro-rata credit or rebate if service is interrupted. After due consideration, the Commission repeals section 10.09.

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<sup>125</sup>

Time Warner Comments., p. 10.

<sup>126</sup>

47 C.F.R. § 76.309(c)(3)(ii)(B).

<sup>127</sup>

Town of Lexington Comments, p. 5.

## **XI. CONCLUSION**

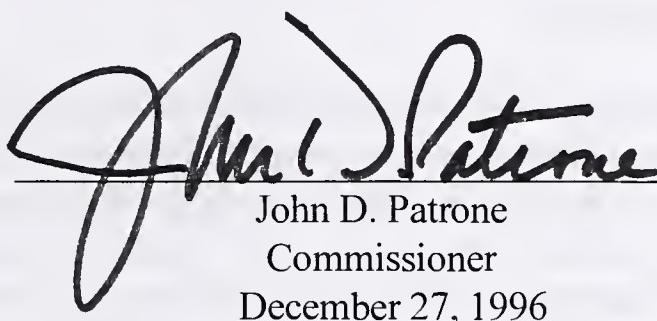
180. We believe this update of our rules will provide a fair, accessible and comprehensive framework to meet the sometimes varying needs and interests of consumers, municipalities and providers as we enter a new era of competitive telecommunications services. We appreciate the helpful input we received from all commenters. As always, the Commission is available to answer any questions regarding our new rules.

## **XII. ORDER**

181. Accordingly, after due consideration and hearing, it is hereby,

**ORDERED:** That the Commission's current regulations in 207 CMR 2.00 through 10.00 are hereby amended by the regulations adopted in this Report and Order and the new regulations shall be effective upon publication in the Massachusetts Register.

By Order of the Massachusetts  
Cable Television Commission\*



John D. Patrone  
Commissioner  
December 27, 1996

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\* Formally, the "Massachusetts Community Antenna Television Commission" under M.G.L. c. 166A, § 2.

## APPENDIX

### 207 CMR 2.00: GENERAL RULES

Section 2.01: Petition for Adoption, Amendment or Repeal of Regulations

Section 2.02: Notice of Public Hearings

Section 2.03: Statutory Reporting Forms

Section 2.04: Waiver

#### 2.01: Petition for Adoption, Amendment or Repeal of Regulations

(1) Any interested person may at any time petition the Commission to adopt, amend, or repeal any regulation contained within 207 CMR pursuant to M.G.L. c. 30A, § 4. The petition shall be addressed to the Commission, be signed by the petitioner and shall set forth clearly and concisely the text of the proposed regulation.

(2) Upon receipt of a petition, the Commission shall determine whether to schedule the petition for further proceedings in accordance with M.G.L. c. 30A and shall so notify the petitioner.

#### 2.02: Notice of Public Hearings

(1) Any public hearing held pursuant to 207 CMR 3.00, 207 CMR 4.00, or 207 CMR 6.00 shall require prior public notice identifying the time, place and purpose of the hearing. The notice shall be published in a newspaper of general circulation in the affected city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing. If there is no newspaper in the city or town, the notice shall be posted in a conspicuous place in the city or town hall not less than 14 days before the day of such hearing. The notice shall also state that any applications, reports, statements and amendments to be considered at the hearing that constitute public records under state law are available for public inspection during regular business hours and for reproduction at a reasonable fee. Evidence of such notice shall be incorporated in the record of any hearing. The issuing authority shall provide prior public notice for all public hearings held pursuant to 207 CMR 3.00 and 207 CMR 4.00. The cable operator shall provide prior public notice for all public hearings held pursuant to 207 CMR 6.00.

(2) Within an area served by an operating cable system and having cablecasting facilities within the control of the cable operator, the operator shall cablecast the prescribed notice over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. If the cablecasting facilities are not within the control of the cable operator, the operator shall use its best efforts to cablecast the prescribed notice. The notice shall be cablecast at times most

## APPENDIX

likely to reach the maximum viewing audience. The log of such cablecasts shall be incorporated in the record of any hearing.

### 2.03: Statutory Reporting Forms

(1) Application for an Initial or Renewal License. Pursuant to M.G.L. c. 166A, §§ 4 and 13, the Commission shall prescribe an application form. No license or renewal thereof shall be issued except upon written application in accordance with this form.

(2) Annual Financial Reporting Forms. Pursuant to M.G.L. c. 166A, § 8, the Commission shall prescribe financial reporting forms, which shall be filed annually by the licensee on or before April 30 for operations during the preceding calendar year. The Commission may prescribe a uniform reporting system for the completion of the financial reporting forms.

(3) Complaint Forms. The Commission shall prescribe a complaint form to be filed by the licensee with the Commission on a quarterly basis pursuant to M.G.L. c. 166A, § 10.

### 2.04: Waiver

Consistent with the public interest, upon receipt of a request from an issuing authority, a cable operator, or upon its own initiative, the Commission may waive any provisions of 207 CMR for good cause shown.

## REGULATORY AUTHORITY

207 CMR 2.00: M.G.L. c. 166A, §§ 8, 10, 13, 16.

## APPENDIX

### 207 CMR 3.00: LICENSING

- Section 3.01: General Provisions
- Section 3.02: Initiation of Licensing Process
- Section 3.03: Formal Licensing Procedure
- Section 3.04: Grant of Final License
- Section 3.05: License Renewal Procedures
- Section 3.06: License Renewal Grant or Denial
- Section 3.07: Request for Amendment
- Section 3.08: Complaint Provisions
- Section 3.09: Rights of Appeal

#### 3.01: General Provisions

- (1) All applications, reports, written statements and amendments filed with or prepared by the issuing authority pursuant to 207 CMR 3.00 that are public records under Massachusetts law shall be made available for public inspection in the city or town clerk's office of the issuing authority during regular business hours and for reproduction at a reasonable fee. The applicant shall also file copies of any application(s) and amendments with the Commission.
- (2) For the purposes of 207 CMR 3.00, the number of residents of each city or town shall be determined from the most recent official federal census figures.
- (3) The issuing authority may appoint a cable advisory committee and define its duties. In carrying out their duties, cable advisory committee members shall not participate in any matters in a way which would violate the Massachusetts conflict of interest law, M.G.L. c. 268A.
- (4) Public notice in accordance with 207 CMR 2.02 shall be provided for any public hearing required to be held by the issuing authority under 207 CMR 3.00.
- (5) With respect to all public hearings held by the issuing authority under 207 CMR 3.00, the issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

#### 3.02: Initiation of Licensing Process

- (1) The licensing process may be initiated by any of the following actions:
  - (a) A decision by the issuing authority to begin the licensing process.
  - (b) The filing with the issuing authority of an application form prescribed by the Commission pursuant to M.G.L. c. 166A, § 4.

## APPENDIX

- (c) The filing with the issuing authority of a petition signed by registered voters of the issuing authority requesting that it begin the licensing process. A petition shall be valid when signed by as many registered voters as equals one-half of one percent of the residents of the issuing authority, except that the number of required signatures shall not be more than 500.
- (2) No later than 60 days after an application or a voters' petition is filed, the issuing authority shall decide whether the licensing process shall be undertaken. Before making such decision and after notice as required by 207 CMR 2.02, the issuing authority shall hold a public hearing. The issuing authority shall afford any applicant, petitioner, resident or other interested party a full and fair opportunity to be heard. If more than one initiative is filed before the hearing, such additional initiative shall be considered during the scheduled hearing.
- (3) If, after the hearing described in 207 CMR 3.02(2), the issuing authority declines to undertake the licensing process, it shall promptly issue a written report containing the specific reasons for its decision. Within seven days of the issuance of the report, the issuing authority shall forward copies of the report to the Commission, to each license applicant of record, and to the incumbent cable licensee(s), if any. For the purposes of M.G.L. c. 166A, § 14, the report shall be considered a denial of any applications pending before the issuing authority.
- (4) If the issuing authority elects to proceed with the licensing process, it shall approve or deny each application within 12 months from the date it decides to do so under 207 CMR 3.02(2).

### 3.03: Formal Licensing Procedure

- (1) If the issuing authority elects to undertake the licensing process under 207 CMR 3.02(2) it shall promptly:
  - (a) Notify the Commission of the date that the licensing process was initiated; and
  - (b) Solicit applications for a cable license or licenses and specify a filing deadline for such applications.
- (2) License applications shall be solicited by publication of a notice in a newspaper of general circulation in the city or town soliciting the applications at least once in each of two successive weeks, the first publication being not less than 60 days before the filing deadline for receipt of applications. Such notice shall also be published not less than 60 days before the filing deadline in one trade journal selected from a listing on file with the Commission. No applications may be filed after the issuing authority's final deadline for applications has passed.

## APPENDIX

- (3) Within 90 days of the application filing deadline under 207 CMR 3.03(1)(b), the issuing authority shall issue a written report that includes specifications for the cable license as it deems appropriate. Within seven days after its issuance, the issuing authority shall forward copies of the report to each applicant of record and to the Commission and shall set a deadline for receipt of amendments to applications. No applicant shall materially amend its application after the deadline for receipt of amendments.
- (4) After issuing its report under 207 CMR 3.03(3), and after notice as required by 207 CMR 2.02, the issuing authority shall hold a public hearing to assess the qualifications of each applicant. Assessment of applicant qualifications shall be limited to the information provided in the applications on file, any amendments to such applications, the issuing authority report on license specifications, oral testimony given during the hearing and other relevant information included in the hearing record.
- (5) Within 60 days following the close of the hearing the issuing authority shall approve or deny each application. The issuing authority shall grant a provisional license to any successful applicant and shall issue a written public statement containing in detail the reasons for the approval or denial of each application. The issuing authority shall send a copy of such statement to each applicant of record.
- (6) The provisional license shall be executed within three months of the issuing authority's vote to award the provisional license. It shall be valid for a period no longer than one year, by which time the provisional licensee must have met the requirements set forth in 207 CMR 3.04(1). The provisional license shall expire upon the issuance of a final license or one year from the date of execution of the provisional license, whichever occurs first.
- (7) Within seven days of the issuance of the public statement regarding the approval or denial of license applications the issuing authority shall file copies of the following documents with the Commission:
  - (a) The issuing authority statement prepared pursuant to 207 CMR 3.03(5); and
  - (b) The provisional license, if one has been granted.
- (8) No provisional license or any rights thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, either directly, indirectly, or by transfer or assignment of control by any entity holding such provisional license. "Transfer or assignment of control" shall be defined in accordance with 207 CMR 4.00.
- (9) Actual construction of physical facilities for a cable system may not commence prior to the grant of a final license pursuant to 207 CMR 3.04.

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### 3.04: Grant of Final License

- (1) A final license to construct and operate a cable system shall be granted by the issuing authority following substantial compliance with each of the following:
  - (a) The submission requirements contained in the application form prescribed by the Commission, pursuant to M.G.L. c. 166A, § 4; and
  - (b) The requirements of M.G.L. c. 166A, §§ 3, 4 and 5.
- (2) A final license shall contain terms substantially identical with the terms contained in the provisional license. Notwithstanding the foregoing, a final license may contain terms differing from those in the provisional license, if the issuing authority, in the public statement required by 207 CMR 3.04(4), sets forth in detail its reasons for accepting an alteration of those terms.
- (3) In the event the issuing authority finds that there has been a failure to comply with the provisions of 207 CMR 3.04(1), the issuing authority shall deny a final license to the provisional licensee and shall issue a written statement setting forth in detail the basis for such finding and denial. A copy of the statement shall be sent to the provisional licensee and to the Commission.
- (4) The issuing authority shall grant a final license to an approved applicant and shall issue a written public statement containing in detail the reasons for granting the approval, including, where applicable, the reasons for accepting an alteration of the terms of the provisional license. A copy of the statement shall be sent to the licensee.
- (5) Within seven days of the grant of a final license, the issuing authority shall file copies of the following documents with the Commission:
  - (a) the final license;
  - (b) the written statement issued pursuant to 207 CMR 3.04(4); and
  - (c) the completed application form prescribed by the Commission pursuant to M.G.L. c. 166A, § 4.
- (6) If the issuing authority denies the final license, it may recommence the licensing process at any time. If this occurs within a reasonable time after the issuance of the public statement under 207 CMR 3.04(3), the issuing authority may request a waiver for an abbreviated licensing process in accordance with 207 CMR 2.04.

### 3.05: License Renewal Procedures

- (1) The renewal of a license to operate a cable television system shall be in accordance with the federal license renewal statute, 47 U.S.C. § 546. Sections 3.05, 3.06 and 3.09 shall supplement the federal license renewal statute.

## APPENDIX

- (2) All license renewal applicants shall complete the application form prescribed by the Commission pursuant to M.G.L. c. 166A, § 4.
- (3) No license renewal may be granted or denied without a prior public hearing with prior public notice pursuant to 207 CMR 2.02.
- (4) The issuing authority shall notify the license applicant in writing of the date of the completion of ascertainment proceedings conducted pursuant to 47 U.S.C. § 546(a).
- (5) The issuing authority's preliminary decision to deny renewal shall be made in writing and shall include the basis of the denial.

### 3.06: License Renewal Grant or Denial

- (1) Concurrent with the grant of a renewal license, the issuing authority shall issue a written public statement reporting the license grant and detailing the reasons for it, including but not limited to the applicant's substantial compliance with provisions set forth in 47 U.S.C. § 546(c)(1)(A)-(D):
  - (a) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
  - (b) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
  - (c) The operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and
  - (d) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- (2) Within seven days of the grant of a renewal license, the issuing authority shall file copies of the following documents with the Commission:
  - (a) The issuing authority statement prepared pursuant to 207 CMR 3.06(1); and
  - (b) The renewal license.
- (3) Should the issuing authority deny a renewal application, within 14 days of its decision to deny, it shall issue a written statement detailing the reasons for its denial, specifically addressing the criteria set forth in 207 CMR 3.06(1)(a) through (d). The issuing authority shall file a copy of this statement with the license renewal applicant and with the Commission upon issuance.

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### 3.07: Request for Amendment

(1) Notice. When an issuing authority and a licensee jointly propose to amend a final license, the issuing authority shall publish notice in a newspaper of general circulation in the city or town to be affected by any amendment. The notice shall include a concise summary of each amendment sufficient to identify its subject matter. Publication shall be made not less than 14 days before the commencement of the public comment period pursuant to 207 CMR 3.07(3). If there is no newspaper in such city or town, notice shall be posted in a conspicuous place in the city or town hall for a period not less than 30 days preceding the commencement of the public comment period. The costs of publishing this notice shall be borne equally by the issuing authority and the licensee.

Within any area served by an operating cable system and having cablecasting facilities within the control of the cable operator, the licensee shall cablecast a concise summary of any proposed amendment(s) sufficient to identify their subject matter at least once daily on each of eight days preceding the commencement of the public comment period. Such notice shall be cablecast at times most likely to reach the maximum viewing audience. If the cablecasting facilities are not within the control of the cable operator, the operator shall use its best efforts to cablecast the prescribed notice.

(2) Report on Request for Amendment. Coincident with publication of notice of any proposed amendment, the issuing authority shall make available to the public in the city or town clerk's office a written report, prepared by the issuing authority and cable licensee, which shall:

- (a) Identify the licensee, the full text of the proposed amendment, and the purpose for which the requested amendment is being made;
- (b) State the date the request for amendment was received by the issuing authority;
- (c) Describe the probable effect(s) of the proposed amendment on consumers and any other concerned parties.

(3) The public shall be afforded a reasonable opportunity to provide input on the proposed amendment during a public comment period of at least 21 days before the issuing authority's final decision on the adoption of the proposed amendment.

(4) The proposed amendment shall be adopted if the issuing authority and the licensee so determine within a reasonable period following the close of the public comment period.

(5) Within 10 days of adopting a license amendment, the issuing authority shall issue a written public report specifying the reasons for its decision. Upon issuance of its report, the issuing authority shall forward copies of the report and the amended license to the Commission.

## APPENDIX

(6) Nothing shall prevent an issuing authority and a licensee from requesting or adopting more than one amendment at a time pursuant to the provisions of 207 CMR 3.07.

### 3.08: Complaint Provisions

Any person aggrieved by the action of the issuing authority in amending a final license pursuant to 207 CMR 3.07 may file a complaint in writing with the Commission within 30 days of the adoption of the amendment. The Commission may, at its direction, initiate an investigation of the issuing authority's action and hold hearings thereon, giving due notice to all parties.

If, after investigation and hearing, the Commission approves the issuing authority's action, it shall issue notice to the issuing authority to that effect. If the Commission disapproves, it shall issue a decision in writing advising said issuing authority of the reasons for its decision and the issuing authority shall conform with the decision.

### 3.09: Rights of Appeal

(1) Appeals to the Commission by aggrieved parties seeking an initial or renewal license pursuant to 207 CMR 3.00 shall be initiated in accordance with the provisions of M.G.L. c. 166A, § 14. The following parties shall have standing to appeal to the Commission:

- (a) An applicant for an initial license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.02(3) or 3.03(5) or by the failure of an issuing authority to make a decision within 60 days of the hearing provided for in 207 CMR 3.03(4); or
- (b) An applicant for a license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.04(3); or
- (c) An applicant for a renewal license aggrieved by a denial of its application by the issuing authority pursuant to 207 CMR 3.06(3).

(2) The Commission may, after a hearing conducted pursuant to M.G.L. c. 166A, § 14, issue such order as it deems appropriate to carry out the purpose of 207 CMR 3.00.

## REGULATORY AUTHORITY

207 CMR 3.00: M.G.L. c. 166A, §§ 4, 13 and 16.

## APPENDIX

### 207 CMR 4.00: TRANSFER OR ASSIGNMENT OF CONTROL OF A FINAL LICENSE

Section 4.01: Transfer of Control

Section 4.02: Application for Transfer

Section 4.03: Hearing and Notice Requirements

Section 4.04: Standard of Review

Section 4.05: Issuing Authority Report

Section 4.06: Rights of Appeal

#### 4.01: Transfer of Control

(1) A transaction through which a person (or other entity), a family group, or a group of persons (or entities) acting in concert, gains or loses control of a license or licensee shall constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

(2) A transfer or assignment of a license or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7. Under 207 CMR 4.00, an "affiliated company" is any person or entity that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity.

(3) On request of a cable operator, an issuing authority or on its own initiative, the Commission may determine whether or not a particular transaction shall be considered a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

#### 4.02: Application for Transfer

(1) An applicant for transfer or assignment of a license or control thereof shall file with the affected community Federal Communications Commission Form 394, as it may be amended from time to time, accompanied by the required \$100 application fee. As such application is received, it shall be made available for public inspection in the city or town clerk's office during regular business hours and for reproduction at a reasonable fee. Simultaneously with the community filing, the applicant shall file a copy of any such FCC Form 394 with the Commission. In instances in which there are several affected communities, and the FCC Form 394 for each one contains identical attachments, an applicant may file just two sets of attachments with the FCC Form 394 filed with the Commission.

## APPENDIX

(2) The issuing authority shall have 120 days from the filing of a completed FCC Form 394 to take final action on it. Requests for additional information by the issuing authority will not toll the 120 day review period unless the issuing authority and the applicant agree to an extension of time.

### 4.03: Hearing and Notice Requirements

(1) Within 60 days after the filing of the application, the issuing authority shall hold public hearing(s) to consider the desirability of approving the transfer. The issuing authority shall insure that the transferor and transferee, residents, and other interested parties are afforded full and fair opportunity to be heard.

(2) The notice of the public hearing shall be provided pursuant to 207 CMR 2.02. The issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

### 4.04: Standard of Review

(1) In reviewing an application for a transfer or assignment of a license or control thereof, an issuing authority shall consider only the transferee's

- (a) management experience,
- (b) technical expertise,
- (c) financial capability, and
- (d) legal ability to operate a cable system under the existing license.

(2) As part of an issuing authority's review of an application for a transfer or assignment of a license or control thereof, an issuing authority shall not propose amendments to or renegotiate the terms of the existing license or any license renewal proposal.

### 4.05: Issuing Authority Report

Within ten days of taking final action on any FCC Form 394, the issuing authority shall send the Commission a letter summarizing the action taken. If an issuing authority denies the application, it shall set forth a detailed statement of reasons for the denial in the letter to the Commission.

### 4.06: Rights of Appeal

Appeals to the Commission by aggrieved parties seeking a transfer of a final license pursuant to 207 CMR 4.00 shall be initiated in accordance with the provisions of M.G.L. c. 166A, § 14.

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The Commission may, after a hearing conducted pursuant to M.G.L. c. 166A, § 14, issue such order as it deems appropriate to carry out the purpose of 207 CMR 4.00.

## REGULATORY AUTHORITY

207 CMR 4.00: M.G.L. c. 166A, §§ 7 and 16.

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### 207 CMR 5.00: BILLING AND TERMINATION OF SERVICE

Section 5.01: Billing Practices Notice

Section 5.02: Services, Rates and Charges Notice

Section 5.03: Form of Bill

Section 5.04: Advance Billing and Issuance of Bills

Section 5.05: Billing Due Dates, Delinquency, Late Charges and Termination of Service

Section 5.06: Charges for Disconnection or Downgrading of Service

Section 5.07: Billing Disputes

Section 5.08: Security Deposits

#### 5.01: Billing Practices Notice

(1) Every cable television operator shall give written notice of its billing practices to potential subscribers before a subscription agreement is reached. Such notice shall include practices relating to the frequency and timing of bills, payment requirements necessary to avoid account delinquency, billing dispute resolution procedures and late payment penalties.

(2) A copy of the cable television operator's billing practices notice, work order and sample subscriber bill shall be filed by March 15th of each year with the Commission, the issuing authority, and the company's local office, where they shall be available for public inspection. If an operator amends its billing practices notice, work order or subscriber bill after submitting the annual filing, it shall file copies of the amendments with the Commission, the issuing authority and the company's local office.

(3) At least 30 days prior to implementing a change of one of its billing practices, the cable television operator shall notify in writing the Commission, the issuing authority and all affected subscribers of the change and include a description of the changed practice.

(4) Statements about billing practices in work orders, marketing, materials and other documents shall be consistent with the billing practices notice.

#### 5.02: Services, Rates and Charges Notice

(1) The cable television operator shall give notice of its services, rates and charges to potential subscribers before a subscription agreement is reached.

(2) At least 30 days prior to implementing an increase in one of its rates or charges or a substantial change in the number or type of programming services, the operator shall notify, in writing, the Commission, the issuing authority and all affected subscribers of the change and include a description of the increased rate

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or charge. The notice shall list the old and new rate or charge and, if applicable, the old and new programming services provided.

(3) Every cable television operator shall fully disclose in writing all of its programming services and rates, upon request from a subscriber.

(4) Every cable television operator shall fully disclose in writing all of its charges for installation, disconnection, downgrades and upgrades, reconnection, additional outlets, and rental, purchase and/or replacement due to damage or theft of equipment or devices used in relation to cable services, upon request from a subscriber.

(5) Every cable television operator shall provide written notice of the charge, if any, for service visits and under what circumstances such charge will be imposed, upon request from a subscriber.

(6) A copy of the cable operator's programming services, rates and charges shall be filed by March 15th of each year with the Commission, the issuing authority and the company's local office where it shall be made available for public inspection. If an operator amends its notice after the annual filing, it shall file a copy of the amendment with the Commission, the issuing authority and the company's local office.

(7) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. This provision, however, shall not preclude the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier of service, or the restructuring or division of existing tiers of service that do not result in a fundamental change in the nature of an existing service or tier of service.

### 5.03: Form of Bill

(1) The bill shall contain the following information in clear, concise and understandable language and format:

(a) the name, local address and telephone number of the cable television operator. The telephone number shall be displayed in a conspicuous location on the bill and shall be accompanied by a statement that the subscriber may call this number with any questions or complaints about the bill or to obtain a description of the subscriber's rights under 207 CMR 5.07 in the event of a billing dispute;

(b) the period of time over which each chargeable service is billed including prorated periods as a result of establishment and termination of service;

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- (c) the dates on which individually chargeable services were rendered and any applicable credits were applied;
  - (d) separate itemization of each rate or charge levied or credit applied, including but not be limited to, basic, premium service and equipment charges, as well as any unit, pay-per-view or per item charges;
  - (e) the amount of the bill for the current billing period, separate from any prior balance due;
  - (f) the date on which payment is due from the subscriber.
- (2) Cable operators may identify as a separate line item of each regular subscriber bill the following:
- (a) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to whom the fee is paid;
  - (b) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels;
  - (c) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under 207 CMR 5.03, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.
- (3) All itemized costs shall be direct and verifiable. Each cable operator shall maintain a document in its public file which shall be available upon request, that provides the accounting justification for all itemized costs appearing on the bill.

### 5.04: Advance Billing and Issuance of Bill

- (1) In the absence of a license provision further limiting the period of advance billing, a cable operator may, under uniform nondiscriminatory terms and conditions, require payment not more than two months prior to the last day of a service period.
- (2) A cable subscriber may voluntarily offer and a cable operator may accept advance payments for periods greater than two months.
- (3) Upon request, a cable television operator shall provide subscribers with a written statement of account for each billing period and a final bill at the time of disconnection.

### 5.05: Billing Due Dates, Delinquency, Late Charges and Termination of Service

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- (1) Subscriber payment is due on the due date marked on the bill, which shall be a date certain and in no case a statement that the bill is due upon receipt. The due date shall not be less than five business days following the mailing date of the bill.
- (2) A subscriber account shall not be considered delinquent unless payment has not been received by the company at least 30 days after the bill due date.
- (3) The following provisions shall apply to the imposition of late charges on subscribers:
  - (a) A cable television operator shall not impose a late charge on a subscriber unless a subscriber is delinquent, the operator has given the subscriber a written late charge notice in a clear and conspicuous manner, and the subscriber has been given at least eight business days from the date of delinquency to pay the balance due.
  - (b) A charge of not more than 5 percent of the balance due may be imposed as a one-time late charge.
  - (c) No late charge may be assessed on the amount of a bill in dispute.
- (4) A cable television operator shall not terminate a subscriber's service unless the subscriber is delinquent, the cable operator has given the subscriber a separate written notice of termination in a clear and conspicuous manner, and the subscriber has been given at least eight business days from the mailing of the notice of termination to pay the balance due. A notice of termination shall not be mailed to subscribers until after the date of delinquency.
- (5) A cable television operator shall not assess a late charge on a bill or discontinue a subscriber's cable television service solely because of the nonpayment of the disputed portion of a bill during the period established by 207 CMR 5.07 for registration of a complaint with the operator or during the process of a dispute resolution mechanism recognized under 207 CMR 5.07.
- (6) Any charge for returned checks shall be reasonably related to the costs incurred by the cable company in processing such checks.

### 5.06: Charges for Disconnection or Downgrading of Service

- (1) A cable television operator may impose a charge reasonably related to the cost incurred for a downgrade of service, except that no such charge may be imposed when:
  - (a) A subscriber requests total disconnection from cable service; or
  - (b) A subscriber requests the downgrade within the thirty (30) day period following the notice of a rate increase or a substantial change in the number or type of programming services relative to the service(s) in question.

## APPENDIX

(2) If a subscriber requests disconnection from cable television service prior to the effective date of an increase in rates, the subscriber shall not be charged the increased rate if the cable television operator fails to disconnect service prior to the effective date. Any subscriber who has paid in advance for the next billing period and who requests disconnection from service shall receive a prorated refund of any amounts paid in advance.

### 5.07: Billing Disputes

(1) Every cable television operator shall establish procedures for prompt investigation of any billing dispute registered by a subscriber. The procedure shall provide at least 30 days from the due date of the bill for the subscriber to register a complaint. The cable television operator shall notify the subscriber of the result of its investigation and give an explanation for its decision within 30 working days of receipt of the complaint.

(2) The subscriber shall forfeit any rights under this section if he or she fails to pay the undisputed balance within 30 days.

(3) Any subscriber in disagreement with the results of the cable television operator's investigation shall promptly inquire about and take advantage of any complaint resolution mechanism, formal or informal, available under the license or through the issuing authority before the Commission may accept a petition filed under 207 CMR 5.07(4).

(4) The subscriber or the cable television operator may petition the Commission to resolve disputed matters within 30 days of any final action. Final action under 207 CMR 5.07(3) shall be deemed to have occurred 30 days after the filing of a complaint.

(5) Upon receipt of a petition, the Commission may proceed to resolve the dispute if all parties agree to submit the dispute to the Commission and be bound by the Commission's decision and the Commission obtains a statement signed by the parties indicating that agreement. In resolving the dispute, the Commission may receive either written or oral statements from the parties, and may conduct its own investigation. The Commission shall then issue a decision based on the record and the parties shall receive written notification of the decision and a statement of reasons therefor.

### 5.08: Security Deposits

(1) A cable operator shall not require from any cable subscriber a security deposit for converters or other equipment in excess of the cost of the equipment.

## APPENDIX

- (2) The cable operator shall pay interest to the cable subscriber at a rate of 7 percent per year for any deposit held for six months or more, and such interest shall accrue from the date the deposit is made by the cable subscriber. Interest shall be paid annually by the cable operator to the cable subscriber, either as a direct payment or as a credit to the cable subscriber's account.
- (3) Within 30 days after the return of the converter or other equipment, the cable operator shall return the security deposit plus any accrued interest to the cable subscriber, either as a direct payment or as a credit to the cable subscriber's account.

## REGULATORY AUTHORITY

207 CMR 5.00: 47 U.S.C. § 552, M.G.L. c. 166A, §§ 2A, 3, 5(1), 10, 16 and 17.

## APPENDIX

### 207 CMR 6.00: RATE REGULATION

Section 6.01: Adoption of Federal Cable Rate Regulations

Section 6.02: Commission as Rate Regulator

Section 6.03: Hearings

Section 6.04: Commission Rate Regulation

Section 6.05: Hearing and Notice Requirements

#### 6.01: Adoption of Federal Cable Rate Regulations

Pursuant to M.G.L. c. 166A, § 15 and 47 U.S.C. § 543, federal regulations promulgated by the Federal Communications Commission at Subpart N, “Cable Rate Regulations,” 47 CFR § 76.901 et seq., as amended, are hereby adopted and incorporated by reference in 207 CMR 6.01.

#### 6.02: Commission as Rate Regulator

The Commission is the certified “franchising authority” for regulating basic service tier rates and associated equipment costs in Massachusetts.

#### 6.03: Rate Hearing Procedures

All rate hearings conducted in accordance with M.G.L. c. 166A, § 15 shall be subject to the provisions of M.G.L. c. 30A and 801 CMR 1.00.

#### 6.04: Commission Rate Regulation

The Commission shall, consistent with FCC regulations, regulate the basic service tier and equipment rates:

(1) At the request of an issuing authority; or

(2) On its own if the Commission finds such regulation to be in the public interest. In any case where the Commission acts on its own to regulate rates without the request of an issuing authority, the Commission shall notify the relevant issuing authority and cable operator prior to commencing regulation.

#### 6.05: Hearing and Notice Requirements

For purposes of fixing and establishing rates pursuant to M.G.L. c. 166A, § 15, the Commission shall conduct public hearings at the Commission's principal office or at such other site as it may designate. Public notice of any hearing shall be made pursuant to 207 CMR 2.02, to insure that there is a reasonable opportunity for consideration of the views of interested parties.

## APPENDIX

### REGULATORY AUTHORITY

207 CMR 6.00: 47 U.S.C. § 543, M.G.L. c. 166A § 15.

